STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

U.T., CHANDIGARH

Complaint case No.	:	919 of 2016
Date of Institution	:	14.12.2016
Date of Decision	:	05.05.2017

Rajeev Shastri S/o Sh. Ramesh Kumar r/o Vill. Kharar, P.O. Kharota, Tehsil Jawali, Distt. Kangra, Himachal Pradesh, current residing at 603, Omani Sweets Building, Al Nabha Area, Sharjah, U.A.E. through GPA Holder, Anureet Kumar Sharma S/o Sh. Sanjeevan Sharma r/o #101, KSB Marrigold Homes-II, Sector 126, Kharar, Punjab.

…… Complainant

V e r s u s

M/s Omaxe Chandigarh Extension Developers Private Limited, SCO 143-144, Sector 8-C, Chandigarh, through its Managing Director/Authorized Signatory.

....Opposite Party

BEFORE: JUSTICE JASBIR SINGH (RETD.), PRESIDENT.

MR. DEV RAJ, MEMBER.

MRS. PADMA PANDEY, MEMBER

Argued by:- Sh.Savinder Singh Gill, Advocate for the complainant.

Sh. Ashim Aggarwal, Advocater for the Opposite Party.

PER PADMA PANDEY, MEMBER.

The facts, in brief, are that the complainant was willing to own an independent residential floor for family and personal use and for keeping his roots attached to his motherland and, therefore, he purchased a residential floor measuring 1725 sq. ft. in the project "Omaxe Cassia" situated at New Chandigarh, Mullanpur in resale from Capt. Sukhjeet Singh and Mrs. Barinder Kaur, which was endorsed in favour of the complainant on 05.02.2013 (Annexure C-2). It was stated that Agreement/allotment letter was executed between the original allottee and the Opposite Party on 26.07.2012 (Annexure C-3). As per Clause 23(b) of the allotment letter, the Opposite Party was to complete the development of the unit and deliver possession within 24 months from the date of signing the agreement/allotment letter with an extended period of six months from the date of execution of the said Agreement/allotment letter. The total cost of the residential floor was Rs.56,20,012.25, out of which, the complainant paid the total amount of Rs.51,10,412.08, as per statement of account (Annexure C-4). The complainant requested the Opposite Party through several emails for updating regarding the status or tentative date for handing over possession of the said floor but the Opposite Party time & again extended the tentative time period for handing over of possession and never gave a definite time period for handing over the same. Copies of emails are Annexure C-5 (colly.). As per Clause 23(b) of the allotment letter, the Opposite Party was to deliver possession of the said floor within 30 months from the date of execution of the allotment letter i.e. latest by 25.01.2015 but the Opposite Party failed to offer possession of the said unit, in question. It was further stated that the aforesaid acts, on the part of the Opposite Party, amounted to deficiency, in rendering service, and indulgence into unfair trade practice. When the grievance of the complainant, was not redressed, left with no alternative, a complaint under the Consumer Protection Act, 1986 (in short the 'Act' only), was filed.

2. The Opposite Party, in its written version, has specifically taken an objection as regards existence of Arbitration clause in the Agreement and for referring the matter to the Arbitrator by moving a separate application under Section 8 of Arbitration and Conciliation Act, 1996. It was stated that this Commission has no territorial jurisdiction to try the complaint, as all the payments were made and receipts were issued by the Opposite Party from New Delhi, where registered office of the Opposite Party is located at New Delhi and the impugned unit is located in District Mohali, Punjab. It was further stated that this Commission has no pecuniary jurisdiction to try and entertain the complaint, as the value of claim i.e. value of property + compensation + interest claimed exceeds Rs.1 crore. It was further stated that the complainant did not fall within the definition of "Consumer" as defined under Section 2(d) of the Consumer Protection Act, 1986 because the said property was purchased by the complainant for commercial purposes/speculation. It was admitted regarding purchase of the unit by the complainant from the original allottee, endorsement of the same in favour of the complainant on 05.02.2013 and receipt of the amount of Rs.51,10,412.08 from the complainant in respect of the unit, in question. It was denied that as per Clause 23(b) of the allotment letter that the Opposite Party was to complete the development of the unit and deliver possession thereof within 30 months excluding Sundays and holidays. It was further stated that as per Clause 23(b) of the allotment letter, effort was to be made to complete the development of the unit. Further, it is well settled law that time is not the essence of the contract relating to immovable property and the Opposite Party had only promised to put its best effort to deliver possession and there was no definitive agreement with regard to handing over of possession within any fixed time period. It was further stated that the Opposite Party is making earnest effort to expedite development in the area, where unit of the complainant is located and possession shall

be handed over at the earliest. It was further stated that neither there was any deficiency, in rendering service, on the part of the replying Opposite Party, nor it indulged into unfair trade practice.

3. The complainant, filed rejoinder to the written statement of the Opposite Party, wherein he reiterated all the averments, contained in the complaint, and refuted those, contained in the written version of the Opposite Party.

4. The Parties led evidence, in support of their case.

5. We have heard the Counsel for the parties, and have gone through the evidence and record of the case, carefully.

6. The first question, that falls for consideration, is, as to whether, in the face of existence of arbitration clause in the Agreement, to settle disputes between the parties through Arbitration, in terms of provisions of Section 8 (amended) of 1996 Act, this Commission has no jurisdiction to entertain the consumer complaint. This question has already been elaborately dealt with by this Commission in case titled ' **Sarbjit Singh Vs. Puma Realtors Private Limited', IV (2016) CPJ 126** . Paras 25 to 35 of the said order, inter-alia, being relevant, are extracted hereunder:-

> 25. The next question, that falls for consideration, is, as to whether, in the face of existence of arbitration Clause in the Agreement, to settle disputes between the parties through Arbitration, in terms of provisions of Section 8 (amended) of 1996 Act, this Commission has no jurisdiction to entertain the consumer complaint.
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> 26. To decide above said question, it is necessary to reproduce the provisions of Section 3 of the Consumer Protection Act 1986 (in short the Act), which reads as under;
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> > *"3. Act not in derogation of any other law.—*
> >
> > *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."*
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> 27. It is also desirable to reproduce unamended provisions of Section 8 of 1996 Act, which reads thus:-
>
> > *"8. Power to refer parties to arbitration where there is an arbitration agreement.—*
> >
> > *(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.*

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

28. Many a times, by making reference to the provisions of Section 8 of 1996 Act, in the past also, such objections were raised and the Hon'ble Supreme Court of India, when interpreting the provisions of Section 3 of 1986 Act, in the cases of Fair Air Engg. Pvt. Ltd. & another Vs. N. K. Modi (1996) 6 SCC 385, C.C.I Chambers Coop. Housing Society Ltd. Vs Development Credit Bank Ltd. (2003) 7 SCC 233 , Rosedale Developers Private Limited Vs. Aghore Bhattacharya and others , (Civil Appeal No.20923 of 2013) etc., came to a conclusion that the remedy provided under Section 3 of 1986 Act, is an independent and additional remedy and existence of an arbitration clause in the agreement, to settle disputes, will not debar the Consumer Foras, to entertain the complaints, filed by the consumers.

29. In the year 2015, many amendments were effected in the provisions of 1996 Act. After amendment, Section 8 of 1996 Act, reads as under:-

"8. Power to refer parties to arbitration where there is an arbitration agreement.—

(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists."

30. Now it is to be seen, whether, after amendment in Section 8 of the principal Act, any additional right has accrued to the service provider(s), to say that on account of existence of arbitration agreement, for settling the disputes through an Arbitrator, the Consumer Foras have no jurisdiction to entertain a consumer complaint. As has been held by Hon'ble Supreme Court of India, in various cases, and also of the National Commission, in large number of judgments, Section 3 of the 1986 Act, provides additional remedy, notwithstanding any other remedy available to a consumer. The said remedy is also not in derogation to any other Act/Law.

31. Now, we will have to see what difference has been made by the amendment, in the provisions of Section 8 of 1996 Act. After amendment, it reads that a Judicial Authority is supposed to refer the matter to an Arbitrator, if there exists an arbitration clause in the agreement, notwithstanding any judgment, decree, order of the Hon'ble Supreme Court of India, or any other Court, unless it finds that prima facie, no valid arbitration agreement exists. The legislation was alive to the ratio of the judgments, as referred to above, in earlier part of this order. Vide those judgments, it is specifically mandated that under Section 3 of 1986 Act, an additional remedy is available to the consumer(s), which is not in derogation to any other Act. As and when any argument was raised, the Hon'ble Supreme Court of India and the National Commission in the judgments, referred to above, have made it very clear that in the face of Section 8 of 1996 Act and existence of arbitration agreement, it is still opened to the Consumer Foras to entertain the consumer complaints. None of the judgments ever conferred any jurisdiction upon the Consumer Foras to entertain such like complaints. Only the legal issues, as existed in the Statute Book, were explained vide different judgments. If we look into amended provisions of Section 8 of the principal Act, it explains that judicial Authority needs to refer dispute, in which arbitration agreement exist to settle the disputes notwithstanding any judgment/decree or order of any Court. That may be true where in a case, some order has been passed by any Court, making arbitration Agreement non-applicable to a dispute/parties. However, in the present case, the above said argument is not available. The jurisdiction of Consumer Foras to entertain consumer complaints, in the face of arbitration clause in the Agreement, is in-built in 1986 Act. It was not given to these Foras, by any judgment ever. The provisions of Section 3 of 1986 Act interpreted vide judgments vis a vis Section 8 of un-amended 1996 Act, were known to the legislature, when the amended Act 2015 was passed. If there was any intention on the part of the legislature, then it would have been very conveniently provided that notwithstanding any remedy available in 1986 Act, it would be binding upon the judicial Authority to refer the matter to an Arbitrator, in case of existence of arbitration agreement, however, it was not so said.

32. We can deal with this issue, from another angle also. If this contention raised is accepted, it will go against the basic spirit of 1986 Act. The said Act (1986) was enacted to protect poor consumers against might of the service providers/multinational companies/traders. As in the present case, the complainant has spent his life savings to get a unit, for his residential purpose. His hopes were shattered. Litigation in the Consumer Fora is cost effective. It does not involve huge expenses and further it is very quick. A complaint in the State Commission can be filed, by making payment between Rs.2000/- to Rs.4000/- (in the present case Rs.4000/-). As per the mandate of 1986 Act, a complaint is supposed to be decided within three months, from the date of service to the opposite party. In cases involving ticklish issues (like the present one, maximum not more than six months to seven months time can be consumed), whereas, to the contrary, as per the principal Act (1996 Act), the consumer will be forced to incur huge

expenses towards his/her share of Arbitrator's fees. Not only as above, it is admissible to an Arbitrator, to decide a dispute within one year. Thereafter, the Court wherever it is challenged may also take upto one year and then there is likelihood that the matter will go to the High Court or the Hon'ble Supreme Court of India. Such an effort will be a time consuming and costly one. Taking note of fee component and time consumed in arbitration, it can safely be said that if the matter is referred to an Arbitrator, as prayed, in the present case, it will defeat the very purpose of the provisions of 1986 Act.

33. The 1986 Act provides for better protection of interests and rights of the consumers. For the said purpose, the Consumer Foras were created under the Act. In Section 3 of 1986 Act, it is clearly provided that the said provision is in addition to and not in derogation of any provisions of any other law, for the time being in force. The 1986 Act is special legislation qua the consumers. The poor consumers are not expected to fight the might of multinational companies/traders, as those entities have lot of resources at their command. As stated above, in the present case, the complainant has spent his entire life earnings to purchase the plot, in the said project, launched by the opposite party. However, his hopes were shattered, when despite making substantial payment of the sale consideration, he failed to get possession of the plot, in question, in a developed project. As per ratio of the judgments in the case of Secretary, Thirumurugan Cooperative Agricultural Credit Society v. M. Lalitha (2004) 1 SCC 305 and United India Insurance Co. Ltd. Vs. M/s Pushpalaya Printers, I (2004) CPJ 22 (SC), and LIC of India and another Vs. Hira Lal, IV (2011) CPJ 4 (SC), the consumers are always in a weak position, and in cases where two interpretations are possible, the one beneficial to the consumer needs to be accepted. The opinion expressed above, qua applicability of Section 8 (amended) of 1996 Act, has been given keeping in mind the above said principle.

34. Not only this, recently, it was also so said by the National Commission, in a case titled as Lt. Col. Anil Raj & anr. Vs. M/s. Unitech Limited, and another, Consumer Case No.346 of 2013, decided on 02.05.2016 . Relevant portion of the said case, reads thus:-

> *"In so far as the question of a remedy under the Act being barred because of the existence of Arbitration Agreement between the parties, the issue is no longer res-integra. In a catena of decisions of the Hon'ble Supreme Court, it has been held that even if there exists an arbitration clause in the agreement and a Complaint is filed by the consumer, in relation to certain deficiency of service, then the existence of an arbitration clause will not be a bar for the entertainment of the Complaint by a Consumer Fora, constituted under the Act, since the remedy provided under the Act is in addition to the provisions of any other law for the time being in force. The reasoning and ratio of these decisions, particularly in Secretary, Thirumurugan Cooperative Agricultural Credit Society Vs. M. Lalitha (Dead) Through LRs. & Others - (2004) 1 SCC 305; still holds the field, notwithstanding the recent amendments in the*

Arbitration and Conciliation Act, 1986. [Also see: Skypak Couriers Ltd. Vs. Tata Chemicals Ltd. - (2000) 5 SCC 294 and National Seeds Corporation Limited Vs. M. Madhusudhan Reddy & Anr. - (2012) 2 SCC 506.] It has thus, been authoritatively held that the protection provided to the Consumers under the Act is in addition to the remedies available under any other Statute, including the consentient arbitration under the Arbitration and Conciliation Act, 1986."

35. In view of the above, the plea taken by the opposite party, that in the face of existence of arbitration clause in the Agreement, to settle disputes between the parties through Arbitration, in terms of provisions of Section 8 (amended) of 1996 Act, this Commission has no jurisdiction to entertain the consumer complaint, being devoid of merit, is rejected."

In view of the above, the objection raised by Counsel for the Opposite Party, being devoid of merit, is rejected.

7. The next question that falls for consideration, is, as to whether, this Commission has territorial jurisdiction to entertain and decide the complaint or not.

According to Section 17 of the Act, a consumer complaint can be filed, by the complainant, before the State Consumer Disputes Redressal Commission, within the territorial Jurisdiction whereof, a part of cause of action arose to him. In the instant case, it is evident from the record, that allotment letter (Annexure C-3) annexed by the complainant was sent by the Opposite Party from its Chandigarh Office, as the said allotment letter was duly stamped by Chandigarh office of the Opposite Party. Since, as per the documents, referred to above, a part of cause of action arose to the complainant, at Chandigarh, this Commission has got territorial Jurisdiction to entertain and decide the complaint. The objection taken by the Opposite Party, in its written version, in this regard, therefore, being devoid of merit, must fail, and the same stands rejected.

8. Another objection taken by the Opposite Party, with regard to pecuniary jurisdiction, also deserves rejection. As per admitted facts, the complainant has sought possession of the residential floor alongwith interest @12% p.a. on the deposited amount of Rs.51,10,412.08 for the period of delay in possession till offering of possession of the said floor complete in all respects, compensation to the tune of Rs.5 lacs on account of deficiency in service, unfair trade practice & mental harassment and Rs.1,00,000/- towards litigation expenses. It is argued by Counsel for the Opposite Party that if the value of the property + compensation and interest claimed, it will cross Rs.1 crore and in that event, it will not be open to this Commission to entertain and adjudicate this complaint, for want of pecuniary jurisdiction. It is pertinent to note that complainant sought possession of the unit instead of refund. If we calculate the value of the unit plus compensation, the total value comes to more than Rs.50 lacs and less than Rs.1 crore. This issue, whether interest is to be counted when looking into pecuniary jurisdiction of this Commission, came up for consideration in the case of **Surjit Singh Vs. M/s Emaar MGF Land Pvt. Ltd. and another, Consumer Case no. 484 of 2016 decided on 15.12.2016** , wherein, after noting similar objections it was observed as under:-

" "13. Now we will deal with another contention of the opposite parties that for want of pecuniary jurisdiction, it is not open to this Commission to entertain and adjudicate this complaint. As per admitted facts, the complainant has sought refund of amount paid i.e. Rs.48,95,264/- alongwith interest @12% p.a. from the respective date of deposits; compensation to the tune of Rs.5 lacs, for mental agony and physical harassment and cost of litigation to the tune of Rs.55,000/-. It is argued by Counsel for the opposite parties that if his entire claimed amount is added, alongwith interest claimed, it will cross Rs.1 crore and in that event it will not be open to this Commission to entertain and adjudicate this complaint, for want of pecuniary jurisdiction. To say so, reliance has been placed upon ratio of judgment of a Larger Bench of the National Commission, in the case of Ambrish Kumar Shukla (supra). In the said case, it was specifically observed that when determining pecuniary jurisdiction of the Consumer Foras, it is the value of the goods and services, which has to be noted and not the value of deficiencies claimed. Further, that interest component also has to be taken into account, for the purpose of determining pecuniary jurisdiction.

14. In the first blush, if we look into the ratio of the judgment, referred to above, it appears that this Commission will not have pecuniary jurisdiction to entertain this complaint. However, on deep analysis, we are going to differ with the argument raised by Counsel for the opposite parties. Judgment in the case of Ambrish Kumar Shukla (supra) was rendered by Three Judges Bench of the National Commission, without noting its earlier view of the subject. This issue, whether, when determining pecuniary jurisdiction of the State Commission/ Consumer Foras, interest is to be added with other relief claimed or not, came up for consideration, before the Three Judges Bench of the National Commission in Shahbad Cooperative Sugar Mills Ltd. Vs. National Insurance Co. Ltd. And Ors., II 2003 CPJ 81 (NC) . In the said case, noting similar arguments, it was observed as under:-

> *"3. Complaint (at pp 17-36) was filed with the following prayer :*
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> *"It is, therefore, respectfully prayed that the complaint be allowed and the opposite parties be directed to pay the claim to the tune of Rs. 18,33,000/- plus interest @ 18% from the date of claim till its realization. Also the suitable damages caused to the complainant be ordered to be paid to the complainant."*
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> *4. Bare reading of the prayer made would show that the interest claimed by appellant pertains to the period upto the date of filing complaint, pendente lite and future. Rate and the period for which interest has to be allowed, is within the discretion of State Commission and the stage for exercise of such a discretion would be the time when the complaint is finally disposed of. Thus, the State Commission had acted erroneously in adding to the amount of Rs. 18,33,000/- the interest at the rate of 18% per annum thereon till date of filing of complaint for the purpose of determination of pecuniary jurisdiction before reaching the said stage. Order under appeal, therefore, deserves to be set aside. However, in view of change in pecuniary jurisdiction w.e.f. 15.3.2003, the complaint*

is now to be dealt with by the District Forum instead of State Commission."

15. It was specifically stated that interest claimed by appellant/complainant pertained to the period upto the date of filing complaint, *pendente lite* and future, need not be added in the relief claimed, to determine pecuniary jurisdiction of the State Commission/Consumer Foras. It was rightly said that the rate and period for which the interest has to be allowed, is within the discretion of the particular Consumer Fora, and the stage for exercise of such discretion would be the time, when final order is passed. We are of the considered opinion that the view taken is perfectly justified. There may be cases, where the complainant may not be entitled to claim any interest upon the amount paid, like the one, where he is rescinding his contract and further at what rate interest is to be granted will be determined by the competent Consumer Fora, by looking into the facts of each case. All cases cannot be put into a straitjacket formula, to add interest claimed, to determine pecuniary jurisdiction of the Consumer Foras. The interest, which is a discretionary relief, cannot be added to the value of the goods or services, as the case may be, for the purpose of determining the pecuniary jurisdiction of the Consumer Foras. As per provisions of the Consumer Protection Act, 1986 (Act) value of the goods purchased or services plus (+) compensation claimed needs to be added only, for determining pecuniary jurisdiction of the Consumer Foras.

As per ratio of the judgment of the Supreme Court in the case of New India Assurance Co. Ltd. Vs. Hilli Multipurpose Cold Storage Pvt. Ltd., Civil Appeal No.10941-10942 of 2013, decided on 04.12.2015 , we would like to follow the view expressed by Three Judges Bench (former Bench) of the National Commission in Shahbad Cooperative Sugar Mills Ltd. case (supra), in preference to the ratio of judgment passed by a Bench of co-equal strength (subsequent Bench) of the National Commission in the case of Ambrish Kumar Shukla case (supra).

In New India Assurance Co. Ltd. case (supra), it was specifically observed by the Supreme Court that when a former Bench of co-equal strength has given a finding qua one legal issue, it is not open to the subsequent Bench of co-equal strength to opine qua that very legal issue and give a contrary finding. At the maximum, the subsequent Bench of co-equal strength can refer the matter to the President/Chief Justice of India to constitute a bigger Bench, to look into the matter and reconsider the legal proposition. It was further specifically held that, in case, there are two contrary views by the former and later co-equal strength Benches, the former will prevail. It was so said by looking into the ratio of judgment rendered by the Five Judges Bench of the Supreme Court of India, in Central Board of Dawoodi Bohra Community & Anr. Vs. State of Maharashtra & Anr. (2005) 2 SCC 673, wherein, when dealing with similar proposition, it was observed as under:-

"12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions : (i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and

(ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in Raghubir Singh and Hansoli Devi."

16. In Ambrish Kumar Shukla case (supra), ratio of judgment- Shahbad Cooperative Sugar Mills Ltd. (supra) was not even discussed and considered. In view of above proposition of law laid down by the Five Judges Bench in Central Board of Dawoodi Bohra Community & Anr.`s and also Three Judges Bench of the Supreme Court, in New India Assurance Co. Ltd. Vs. Hilli Multipurpose Cold Storage Pvt. Ltd. case (supra), it is not open to the Bench of co-equal strength to give contrary findings, to the view already expressed by a Former Bench of same strength. In Shahbad Cooperative Sugar Mills Ltd. case (supra), decided on 02.04.2003, it was specifically observed by Three Judges Bench of the National Commission that when determining pecuniary jurisdiction of the Consumer Foras, interest component claimed by the complainant/party, is not to be added. We are of the considered view that in view of proposition of law, as explained above, the view taken in Shahbad Cooperative Sugar Mills Ltd. case (supra), to determine pecuniary jurisdiction without taking interest claimed, will prevail. As such, in the present case, we are not looking into the interest claimed by the complainant, when determining pecuniary jurisdiction of this Commission. If the interest part is excluded, the amount claimed in the relief clause fell below Rs.1 crore and above Rs.20 lacs. Hence, this Commission has pecuniary jurisdiction to entertain and

decide the present complaint. In view of above, the objection raised by the opposite parties, in this regard, being devoid of merit, must fail and the same stands rejected."

In view of above, this objection taken by the Opposite Party that this Commission lacks pecuniary jurisdiction, being devoid of merit, fails and the same stands rejected.

9. The next question, that falls for consideration is, as to whether, the complainant is speculator and purchased the said unit for commercial/speculation purposes? The Counsel for the Opposite Party submitted that the complainant is NRI and resident of UAE and has permanent residence at Kangra and, therefore, he purchased the unit in the project of the Opposite Party for commercial/speculation purposes and, therefore, he did not fall within the definition of "Consumer". After going through the record, we are not agreeing with the contention of the Counsel for the Opposite Party because the complainant, in para No.1 of his complaint, has clearly stated that the complainant was willing to own independent residential floor for family and personal use and for keeping his roots attached to his motherland and with the purpose of owning an abode for personal use near Chandigarh and accordingly purchased a residential floor measuring 1725 sq. ft. in the project of the Opposite Party. Even otherwise, the mere fact that it was a residential unit, which was endorsed, in favour of the complainant, was sufficient to prove that it was to be used for the purpose of residence, by the complainant. There is nothing, on the record, that the complainant is property dealer, and deals in the sale and purchase of property. Moreover, with regard to the objection taken by the Counsel for the Opposite Party that the complainant is NRI, even no law debars an NRI, who basically belonged to India, to purchase a residential property in India. Under similar circumstances, the Hon'ble National Commission, in a case titled as **Smt. Reshma Bhagat & Anr. Vs. M/s Supertech Ltd. Consumer Complaint No. 118 of 2012, decided on 04.01.2016,** held as under:-

"We are unable to clap any significance with these faint arguments. It must be borne in mind that after selling the property at Bangalore, and in order to save the money from riggers of capital gain tax, under Section 54 of the Income Tax Act, 1961, there lies no rub in getting the property, anywhere, in whole of India. There is not even an iota of evidence that they are going to earn anything from the flat in dispute. From the evidence, it is apparent that the same had been purchased for the residence of the complainants. Moreover, Sh. Tarun S. Bhagat, who is an independent person. It cannot be made a 'rule of thumb' that every NRI cannot own a property in India. NRIs do come to India, every now and then. Most of the NRIs have to return to their native land. Each NRI wants a house in India. He is an independent person and can purchase any house in India, in his own name ."

Thus, in the absence of any cogent evidence, in support of the objection raised by the Counsel for the Opposite Party, mere bald assertion to that effect, cannot be taken into consideration. In a case titled as **Kavita Ahuja Vs. Shipra Estate Ltd. and Jai Krishna Estate Developer Pvt. Ltd. Consumer Complaint No.137 of 2010, decided on 12.02.2015,** by the National Consumer Disputes Redressal Commission, New Delhi, it was held that the buyer(s) of the residential unit(s), would be termed as consumer(s), unless it is proved that he or she had booked the same for commercial purpose. Similar view was reiterated by the National Commission, in **DLF Universal Limited Vs Nirmala Devi Gupta, Revision Petition No. 3861 of 2014, decided on 26.08.2015** . Not only above, recently under similar circumstances, in a case titled as " **Aashish Oberai Vs. Emaar MGF Land Limited, Consumer Case No.70 of 2015,**

decided on 14 Sep. 2016", the National Commission, while rejecting similar plea raised by the builder, observed as under:-

> *"In the case of the purchase of the house which a builder undertakes to construct for the buyer, the purchase can be said to be for a commercial purpose where it is shown, by producing evidence, that the buyer is engaged in the business of a buying and selling of houses and or plots as a trading activity, with a view to make profits by sale of such houses or plots. A person cannot be said to have purchased a house for a commercial purpose only by proving that he owns or hand purchased more than one houses or plots. In a given case, separate houses may be purchased by a person for the individual use of his family members. A person owning a house in a city A may also purchase a house in city B for the purpose of staying in that house during short visits to that city. A person may buy two or three houses if the requirement of his family cannot be met in one house. Therefore, it would not be correct to say that in every case where a person owns more than one house, the acquisition of the house is for a commercial purpose. In fact, this was also the view taken by this Commission in* ***Rajesh Malhotra & Ors. vs. Acron Developers Pvt. Ltd. &Ors. First Appeal No.1287 of 2014 decided on 05.11.2015."***

The principle of law, laid down, in the aforesaid cases, is fully applicable to the present case. The complainant, thus, falls within the definition of a 'consumer', as defined under Section 2(1)(d) of the Act. Such an objection, taken by the Opposite Party, in its written reply, therefore, being devoid of merit, is rejected.

10. The next question, which falls for consideration, is as to whether within which period, the possession of the unit, in question, is to be delivered to the complainant. It is the admitted fact that the said unit was allotted to Capt. Sukhjeet Singh & Mrs. Barinder Kaur (original allottees) vide allotment letter dated 26.07.2012 (Annexure C-3). The complainant purchased the said unit from the original allottees and the same was endorsed in his favour on 05.12.2013 vide acknowledgment (Annexure C-2). Clause 23(b) relating to possession reads as under:-

> "23(b) The Company shall put its best efforts to complete the development/ construction of the Unit within 24 (Twenty Four) months from the date of signing of this Allotment Letter by the Allottee(s), or within an extended period of 6 (six) months, however construction within aforesaid 30 months is subject to force majeure conditions [as mentioned in sub-clause (c) & (d) hereunder] and subject to all Unit Allottees making timely payment or subject to any other reasons beyond the control of the Company. No claim by way of damages/compensation shall lie against the Company in case of delay in handing over the possession on account of any of the aforesaid reasons and the Company shall be entitled to a reasonable extension of time for the delivery of possession of the said Unit to the Allottee(s). The aforesaid period of development shall be computed by excluding Sundays, Bank Holidays, enforced Govt. holidays and the days of cessation of work at site in compliance of order of any Judicial/concerned State Legislative Body."

Thus, computing 24 months period from the date of signing of the allotment letter i.e. 26.07.2012 (Annexure C-3), the possession was to be delivered by 25.07.2014. As per aforesaid clause, another extended period of six months subject to force majeure, was available to the Opposite Party to hand over possession. The Opposite Party has stated that period was to be computed by excluding Sundays, Bank Holidays, enforced Govt. holidays and the days of cessation of work at site in compliance of order of any Judicial/concerned State Legislative Body and a period of around five months was on this account. Apparently, for seeking six months extension beyond 24 months, the Opposite Party owes an explanation, if the delay was on account of force majure conditions but nothing by way of cogent evidence to this effect has been placed on record. It is pertinent to note that the Opposite Party was to deliver possession within 24 months from the date of signing of the allotment letter or within an extended period of 6 months, subject to exclusion of Sundays, government holidays etc., and the said issue was already decided vide order dated 10.06.2016 passed by this Commission in Complaint Case No.311 of 2015 titled as **Shellender Singh Vs. M/s. Omaxe Chandigarh Extension Developers Pvt. Ltd.,** wherein, it was decided that when no explanation for extension of six months period has been furnished, the Opposite Party at the most could be allowed one out of the two benefits i.e. either six months extension beyond 24 months or five months period on account of Sundays/Holidays etc. In view of the aforesaid order passed by this Commission, we are of the view that possession is to be delivered within 24 months + 6 months i.e. maximum period of 30 months from the date of signing the allotment letter and the said period of 30 months has been calculated from 26.07.2012, as such, the said period expired on 25.01.2015. So, it is clearly proved that possession of the said unit was to be delivered by the Opposite Party latest by 25.01.2015.

11. The next question, that falls for consideration, is, as to whether, the complainant is entitled to fine/compensation, if so, at what rate, for non-delivery of physical possession of the unit. Earlier, in a case titled as Narender Kumar Yadav Vs. DLF Homes Panchkula Pvt. Ltd. and another, consumer complaint no.224/2015 decided on 13.01.2016 , this Commission, had granted compensation @ Rs.10/- per square feet of the saleable area (as provided in the Agreement), alongwith interest, to the complainant, for the period of delay. However, recently in Parsvnath Exotica Ghaziabad Resident's Association Vs. Parsvnath Buildwell Pvt. Ltd. & Anr., consumer complaint no.45/ 2015, decided by the Hon'ble National Commission, on 06.05.2016 , under similar circumstances, interest on the deposited amount, for the period of delay was granted, by holding as under:-

> *"Though, the Agreement between the developer and the flat buyers provides for payment of compensation in case of delay @ Rs.5/- per square feet of the super area per month, such clauses have been found to be unfair trade practice and have been consistently rejected by this Commission in several decision, including Consumer Complaint No. 427 of 2014 Satish Kumar Pandey & Ors. Vs. Unitech Ltd. and connected matters decided on 08.6.2015. Therefore, the aforesaid clauses cannot be taken into consideration, while determining the compensation payable to the members of the complainant association for the aforesaid delay in completion of construction."*

12. Not only this, in another case, titled as Capt. Gurtaj Singh Sahni & anr. Vs Manager, Unitech Limited & anr., consumer complaint bearing no.603/2014, decided on 02.05.2016 , the Hon'ble National Commission, directed the Opposite Party /builder to pay interest on the

deposited amount, for the period of delay, till delivery of possession of the unit. Relevant contents of the said order reads thus:-

> *"8. If the compensation for the delay in construction is restricted to what is stipulated in the Buyers Agreement, there will be no pressure upon the builder to complete the construction since he will be more than happy to keep on paying paltry compensation of about 3% per annum of the capital investment, instead of arranging funds at much higher cost, to complete the construction.*
>
> *9. xxxxxxxxxxxxx*
>
> *10. For the reasons stated hereinabove, the complaints are disposed of with the following directions:*
>
> *(1) xxxxxxxxxxxxxx*
>
> *(2) The opposite party shall pay compensation in the form of simple interest @ 12% per annum from the expected date of possession till the date on which the possession is actually offered to the complainants after completing the construction in all respects and obtaining the requisite completion certificate."*

13. No doubt in the allotment letter, some scope for delay due to unavoidable circumstances was kept in mind, for compensating the complainant for delay, was incorporated but it does not mean that the intention was that even in the event of inordinate delay, in completing the construction and delivering the possession, the complainant would be entitled to meagre compensation of Rs.10/- per sq. ft. per month, which is much less than the bank rate for loan or fixed deposit. If the argument of the Opposite Party is to be accepted, it would lead to absurd situation and would give an unfair advantage to the unscrupulous builder, who might utilize the consideration amount meant to finance the project, by the buyer for its other business venture, at nominal interest of 3 to 4 percent, as against much higher bank lending rates. This could never be the intention of legislation that if such a proposition is accepted, it would result in defeating the object of Consumer Protection Act. Thus, keeping in view the principle of law laid down by the Hon'ble National Commission, in the cases, referred to above, if interest @12% in lieu of fine, on the deposited amount for the period of delay, till delivery of possession of the unit, is awarded, that would meet the ends of justice.

14. The next question, that falls for consideration, is, as to whether, the complainant is entitled to compensation, under Section 14(1)(d) of the Act, on account of mental agony and physical harassment, and injury caused to him, for a long number of years, by not delivering physical possession of the unit to him, by the Opposite Party, by the stipulated period of 24 months mentioned in the allotment letter or extended period of 6 months i.e. latest by 25.01.2015. The complainant purchased the unit, with the hope to have a roof over his head alongwith with his family members but his hopes were dashed to the ground. It is pertinent to note that the Opposite Party in its written statement stated that the Opposite Party is making earnest effort to expedite development in the area where unit of the complainant is located and possession shall be handed over at the earliest . So, it is clearly proved that the Opposite Party failed to offer/deliver possession of the unit to the complainant, till date i.e. even after the expiry of a period of more than about four years, from the date of signing the allotment letter and more than about 2 years, from the stipulated date (25.01.2015), by the Opposite Party, what to speak of delivery thereof.

The complainant underwent a lot of mental agony and physical harassment, on account of the acts of omission and commission of the Opposite Party. Compensation, on account of mental agony and physical harassment, caused to the complainant, due to the acts of omission and commission of the Opposite Party, if granted, to the tune of Rs.2 lacs, shall be reasonable, adequate and fair. The complainant, is, thus, held entitled to compensation, in the sum of Rs.2 lacs.

15. For the reasons recorded above, the complaint is partly accepted, with costs, in the following manner. The Opposite Party is directed as under :-

(i) To hand over physical possession of the unit, allotted in favour of the complainant, complete in all respects, as per the terms and conditions of the Agreement, to the complainant, within a period of four months, from the date of receipt of a certified copy of this order, on payment of the amount, legally due against him.

(ii) To execute and get registered the sale deed, in respect of the unit, in question, within one month from the date of handing over possession, as indicated in Clause (i) above, on payment of registration charges and stamp duty etc. by the complainant.

(iii) To pay fine/compensation, by way of interest @12% p.a., on the deposited amount, to the complainant, from 25.01.2015 (the deemed date of possession) to 30.04.2017, within two months, from the date of receipt of a certified copy of this order, failing which, the said amount shall carry penal interest @15% p.a. instead of 12% p.a., till realization.

i. To pay fine/compensation by way of interest @12% p.a. on the deposited amount, due to the complainant w.e.f. 01.05.2017, onwards (per month), by the 10th of the following month, failing which, the same shall also carry penal interest @15% p.a., instead of 12% p.a., from the date of default, till payment is made. This amount of penalty shall be paid in this manner till actual delivery of possession.
ii. To pay compensation, in the sum of Rs.2 lacs, on account of mental agony and physical harassment, caused to the complainant, within two months from the date of receipt of a certified copy of this order, failing which, the same shall carry interest @12% p.a., from the date of filing the complaint till realization.
iii. To pay cost of litigation, to the tune of Rs.50,000/-, to the complainant, within two months from the date of receipt of a certified copy of this order, failing which, the same shall also carry interest @12% p.a., from the date of filing the complaint till realization.

16. Certified Copies of this order be sent to the parties, free of charge.

17. The file be consigned to Record Room, after completion.

Pronounced.

May 5, 2017 . **Sd/-**

[JUSTICE JASBIR SINGH (RETD.)]

[PRESIDENT]

Sd/-

[DEV RAJ]

MEMBER

Sd/-

(PADMA PANDEY)

MEMBER

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