

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,  
U.T., CHANDIGARH**

<b>Complaint case No.</b>	:	73 of 2016
Date of Institution	:	26.02.2016
Date of Decision	:	03.08.2016

Neeraj Kinra wife of Atul Kinra, House No. 3159, Sector 38-D, Chandigarh, through her Authorised Representative Ashok Mahajan son of Sh.D.P.Mahajan, resident of House No.3149, Sector 20-D, Chandigarh.

.....Complainant

## **V e r s u s**

Emaar MGF Land Pvt. Limited, SCO 120-122, Sector 17-C, Chandigarh, through its Authorized Representative.

... Opposite Party

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

**MR. DEV RAJ, MEMBER.**

**MRS. PADMA PANDEY, MEMBER**

**Argued by:**

Sh. Mukand Gupta, Advocate for the complainant.

Sh. Ashim Aggarwal, Advocate for the Opposite Party.

**PER PADMA PANDEY, MEMBER**

The facts, in brief, are that Sh. Atul Kinra (initial allottee) and also husband of the complainant registered himself for allotment of a 300 sq. yards plot on 23.09.2006 and paid an amount of Rs.10,35,000/- to the Opposite Party vide receipt (Annexure C-1). Thereafter, plot No.212, Augusta Park, Sector 109, Mohali was provisionally allotted to the initial allottee vide provisional allotment letter dated 09.05.2007 (Annexure C-2) and total price of the plot was Rs.40,50,354/- including PLC and EDC. It was stated that Plot Buyer's Agreement was executed between the parties on 20.06.2007 (Annexure C-3) and paid the total amount of Rs.38,77,854/- to the Opposite Party (Annexure C-5), as the Company also waived off the last installment due to timely payment. It was further stated that as per Clause 8 of the Agreement, possession of the unit/plot was to be delivered within a maximum period of 3 years i.e. latest by 20.06.2010 but the Opposite Party failed to deliver possession, as per terms and conditions of the Agreement. It was further stated that the Opposite Party was required to take all the requisite permissions from the competent authorities such as completion certificate, environment clearance, electricity connection, NOC from forest department, approval of layout plan etc. even before developing the mega housing project and before offering possession of the plots to the consumers but it did not do so. It was further stated that after expiry of five years, the Opposite Party informed that plot, which was allotted, has not been developed and, as such, it decided to reallocate another plot i.e. bearing No.172, MUL area, Sector 109, which was accepted, as the complainant paid whole of the price of the plot. It was further stated that the initial allottee wrote another letter dated 09.04.2012 (Annexure C-7) to the Opposite Party and asked to deliver possession of the plot at the earliest. After the plot was reallocated, supplementary Plot Buyer's Agreement was executed between the parties on 26.07.2012, wherein, it was agreed that all the terms and conditions of the earlier Agreement dated 20.06.2007 would be applicable to the parties, except that instead of plot No.212, the initial allottee was allotted plot No.172, MUL area, Sector 109, Mohali. It was further stated that the Opposite Party failed to develop the plot initially allotted to the initial allottee and, thereafter, reallocated another plot but still it failed to deliver the possession, as well. It was further stated that the Opposite Party sent an email on 27.02.2013 (Annexure C-8) to the initial allottee, acknowledging therein that the development work is in progress and the same would be completed within 4 to 5 months, which was duly replied by the initial allottee on 28.02.2013 (Annexure C-9). It was further stated that the complainant/representative visited the site and found that neither there was development at the site nor the Opposite Party was ready for paying penalty. Thereafter, vide letter dated 13.03.2014 (Annexure C-11), the Opposite Party alleged the same to be intimation of possession, wherein, it admitted that the development activity in Sector 109, Mohali is in full swing and it would try its best to hand over possession of the plot. It was further stated that the Opposite Party instead of delivering possession of the plot, raised some illegal demand of revised EDC etc. It was further stated that the Opposite Party was offering paper possession, as the Government had not approved the layout plan nor issued the completion certificate to show that plots are ready for possession.

2. It was further stated that the husband of the complainant i.e. Sh.Atul Kinra requested the Opposite Party on 04.08.2015 for transfer of the plot in the name of his wife i.e. the complainant, which was duly agreed by them, after demanding requisite fee and, as such, the said plot was allotted in the name of the complainant. It was further stated that Government of Punjab, Department of Housing & Urban Development issued notification dated 02.09.2014, wherein, it was decided that all the housing projects were required to take completion certificate/partial completion certificate (Annexure C-13) and in pursuance of the aforesaid notification, District Town Planner, GMADA, Mohali issued a letter dated 16.02.2015 (Annexure C-14) to the Opposite Party to get completion certificate but the Company instead of getting completion certificate, applied only for partial completion certificate that too of only small part of area, which was issued only on 16.10.2015 with some terms and conditions (Annexure C-15). It was further stated that as per revised layout plan issued by the competent authority on 15.12.2014 (Annexure C-17), total area of the mega housing project of the Company is 524.08 acres and the Opposite Party took certificate of partial completion on 16.10.2015 for area of 310.139 acre, without disclosing the fact that for which sector the Company applied for the said certificate. It was further stated that the Opposite Party was required to develop two STP and the said STP should be installed under the inspection of independent expert and report be submitted to the Ministry of Environment and Forests but it failed to place on record any document to prove the same. It was further stated that the Opposite Party was not having requisite permission from the competent authority nor was having completion certificate nor it developed its project, but issued letter of possession to the complainant on 10.12.2015 (Annexure C-18) stating that plot is ready for physical possession, as per terms and conditions of the Agreement. Therefore, the complainant requested the Opposite Party vide letter dated 28.01.2016 (Annexure C-19) to refund the deposited amount paid by her alongwith interest but it refused to refund the same on the ground that possession has already been offered to the complainant. It was further stated that the Opposite Party has failed to deliver possession of the plot and now in the year 2015 it offered only the paper possession, which is totally unreasonable. 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 Section 17 of the Consumer Protection Act, 1986 (in short the 'Act' only), was filed.

3. The Opposite Party, in its written version, has not taken objection regarding arbitration clause in the Agreement, and it separately, moved an application u/s 8 of Arbitration and Conciliation Act, 1996 taking a specific objection in this regard for referring the matter to the Arbitrator in terms of the agreed terms and conditions of the Agreement. It was stated that the complainant is a re-allottee/transferee, who purchased the plot, in question, from the original allottee and as per law settled by the Hon'ble Supreme Court, a re-allottee cannot claim any compensation or interest for delay in allotment, as they cannot claim parity with original allottee. It was further stated that the complainant did not fall within the definition of "Consumer", as defined in the Consumer Protection Act, 1986, as the complainant is residing outside India and has not averred that plot was purchased for construction of her own house, as such, the plot was purchased by the complainant for speculation purposes. It was admitted that the amount of Rs.10.35 lacs towards expression of interest was deposited by Mr.Atul Kinra, who was the initial allottee of unit No.109-AP-212-300 and also the Agreement was signed by the original allottee. It was further stated that provisional allotment letter was issued in favour of the earlier allottee on 09.05.2007 and total sale consideration of the unit, in question, was Rs.40,50,354/-. It was further stated that Buyer's Agreement was also executed between Mr.Atul Kinra and the Opposite Party on 20.06.2007. It was denied that possession was to be delivered within 3 years of Agreement. It was further stated that as per Clause 8 of the Agreement, possession was endeavored to be handed over within 3 years from the date of execution the Agreement, else there was a stipulated penalty to be

paid to the allottee. It was further stated that it is well settled principle of law that in case of sale of immovable property, time is never regarded as the essence of the contract and no notice had been received from either the original allottee or the complainant seeking immediate possession, after expiry of 3 years, meaning thereby they had accepted the alleged delay. It was further stated that possession of the plot was offered to the original allottee on 13.03.2014 upon completion of all the amenities under the Agreement and delayed compensation credited to the account of the complainant. It was further stated that after possession was offered, plot was transferred to the name of the complainant and she was satisfied of all the amenities and had agreed to take over possession. It was further stated that the complainant after near expiry of two years from offer of possession, refund has been sought. It was further stated that if the complainant sought refund, the same amounts to cancellation of contract and forfeiture clause would be applicable. It was further stated that the Opposite Party received an amount of Rs.45.24 lacs against the unit, in question, which included compensation credit of Rs.6.72 lacs. It was further stated that the unit was transferred in the name of the complainant on completion of formalities on 04.08.2015. It was further stated that the earlier allottee requested for relocation and as a goodwill gesture, the Opposite Party agreed to the request and accordingly, an Amendment Agreement dated 26.07.2012 was signed between the parties (Exhibit OP/2). It was further stated that the unit offered and accepted was duly approved in the layout by the competent authorities and the Opposite Party also obtained partial completion certificate (Annexure C-15) from the competent authorities, for the area where the plot of the complainant is located, as such, it is proved that all the amenities were complete. It was further stated that the EDC was demanded, as per the rates finalized by the Government. It was further stated that the Possession Offer Letter dated 10.12.2015 was issued to the complainant on completion of relevant formalities. It was further stated that the complainant herself failed to take over possession of the unit and even sought refund. It was further stated that neither there was any deficiency, in rendering service, on the part of the Opposite Party, nor it indulged into unfair trade practice.

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

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

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

7. Admittedly, plot bearing No.212, having approximate area of 300 sq. yards in Augusta Park, Sector 109, Mohali was provisionally allotted to Mr.Atul Kinra (initial allottee) and also husband of the complainant vide provisional allotment letter dated 09.05.2007 (Annexure C-2). It is also the admitted fact that Plot Buyer's Agreement was executed between Mr.Atul Kinra and the Opposite Party on 20.06.2007, at Chandigarh (Annexure C-3). It is proved from Annexure – I (at page No.57 of the file) that the total cost of the unit, including PLC and EDC, was Rs.40,50,354/-. It is also proved from the statement of account (Annexure C-5) that the complainant had paid total sale consideration i.e. Rs.38,77,854/-, after waiver of 5% i.e. Rs.1,72,500/- (Rs.38,77,854/- + Rs.1,72,500/- = Rs.40,50,354/-). Thereafter, the Opposite Party reallocated another plot bearing No.172, MUL Area, Sector 109 to the complainant and Amendment Agreement was also executed between the parties on 26.07.2012. According to the complainant, after the plot was reallocated, supplementary Plot Buyer's Agreement was executed between the parties on 26.07.2012, wherein, it was agreed that all the terms and conditions of the earlier Agreement dated 20.06.2007 would be applicable to the parties, except that instead of plot No.212, the initial allottee was allotted plot

No.172, MUL area, Sector 109, Mohali. It is also the admitted fact that on the request of Mr.Atul Kinra the plot was transferred in the name of his wife Mrs.Neeraj Kinra (complainant). According to the complainant, possession of the unit, in question, was neither delivered to her, complete in all respects within stipulated period, as mentioned in the Agreement, nor refunded the amount to her, despite repeated requests.

8. 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 Arbitration Act 1996, this Commission has no jurisdiction to entertain the present complaint. It may be stated here that the objection raised by the Opposite Party, in this regard, deserves rejection, in view of the judgment passed by this Commission in Abha Arora Vs. Puma Realtors Pvt. Ltd. and another, consumer complaint No.170 of 2015, decided on 01.04.2016, wherein this issue was dealt, in detail, while referring various judgments of the Hon'ble Supreme Court of India; the National Commission, New Delhi, and also Section 3 of the Consumer Protection Act, 1986. Ultimately it was held by this Commission that even 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 jurisdiction to entertain the consumer complaint. It was also so said by the National Commission, recently, 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 LR's. & 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.”

In view of the above, and also in the face of ratio of judgments, referred to above, passed by the National Commission and this Commission, the arguments raised by Counsel for the Opposite Party, stands rejected.

9. The next question, that falls for consideration is, as to whether, the complainant is speculator and purchased the said plot for speculation purposes? The Counsel for the Opposite Party submitted that the complainant is speculator as she is residing outside India and has not averred that plot was purchased for construction of her own house. After going through the record, we are not agreeing with the contention of the Counsel for the Opposite Party because the

complainant, in her complaint, had clearly stated that she required a residential house for her personal use. Even otherwise, the mere fact that it was a residential plot, which was allotted, 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 deal 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 residing outside India, has no value, at all because the Opposite Party has failed to place on record any document, which could prove that she is residing outside India. Moreover, for the sake of arguments, if we believe the contention of the Opposite Party, 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.** The principle of law, laid down, in the aforesaid cases, is fully applicable to the present case. Under these circumstances, by no stretch of imagination, it can be said that, being residing outside India or NRI, the unit, in question, was purchased by the complainant, by way of investment, with a view to earn profit, in future. 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 Counsel for the Opposite Party in this regard, being devoid of merit, is rejected.

10. As regards objection raised by the Counsel for the Opposite Party, that as per Clause 8 of the Plot Buyer’s Agreement, the Company shall make every endeavour to hand over possession within 2 years from the date of execution of the Agreement but not later than 3 years, meaning thereby, the Company had only proposed to hand over possession of the plot within a maximum period of 3 years and in case, the Company is unable to deliver possession then there is liability to pay penalty for period of delay beyond 3 years. It was further stated that there was no definitive commitment to hand over possession within 3 years, as time was not the essence of the contract. It is evident from the record that Plot Buyer’s Agreement was also executed between the parties on

20.06.2007 (Annexure C-3) and as per Clause 8 of the Agreement that the Opposite Party was to hand over possession of the said unit, in favour of the complainant, within a period of 2 years from the date of execution of the Agreement but not later than 3 years and in the event of failure of the possession, the Company should be liable to pay to the complainant a penalty of Rs.50/- per sq. yards per month for such period of delay beyond 3 years from the date of execution of the Agreement. So, it is clearly proved that possession was to be delivered within maximum period of 3 years from the date of execution of the Agreement i.e. latest by 19.06.2010. Thus, once a specific period of 3 years was mentioned in the Agreement, the Opposite Party was bound to deliver possession in the maximum period of 3 years i.e. latest by 19.06.2010 and not beyond that. It is not the case of the Opposite Party that it encountered any force majeure circumstances, as no document has been placed on record in this regard. The time was, thus, unequivocally made the essence of contract. Therefore, the objection taken by the Counsel for the Opposite Party, being devoid of merit, must fail, and the same stands rejected.

11. The next question, that falls for consideration, is, as to whether the Opposite Party offered physical possession of the unit, in question, to the complainant, complete in all respects or not. Initially the plot bearing No.212 in Augusta Park, Sector 109 was provisionally allotted to Sh.Atul Kinra ( husband of the complainant) and, thereafter, Plot Buyer's Agreement was executed between Mr.Atul Kinra and the Opposite Party on 20.06.2007 (Annexure C-3). The allottee paid the total amount of Rs.38,77,854/-, as is evident from statement of account (Annexure C-5), after waiver of 5% i.e. Rs.1,72,500/-. So, it is clearly proved that the allottee paid the whole consideration amount of the plot, in question. Thereafter, the Opposite Party relocated plot bearing No.172, Sector 109, Mohali to Mr.Atul Kinra and the same was duly accepted by him because he had no option but to accept the said plot, as is evident from letter dated 09.07.2012 (Annexure C-7). In this regard, Amendment Agreement dated 26.07.2012 (Annexure R-2) was also executed between Mr.Atul Kinra and the Opposite Party. The plea of the Opposite Party is that possession of plot No.172, MLU was offered to Mr.Atul Kinra vide letter dated 13.03.2014 (Annexure C-11) upon completion of all the amenities. So, it is clear that the said letter dated 13.03.2014 is only the intimation of possession given by the Opposite Party and not the possession letter issued by it. In the meanwhile, the said plot was transferred in the name of Mrs. Neeraj Kinra, complainant, on the request of her husband Mr.Atul Kinra. It is pertinent to note that the Opposite Party also issued Possession Offer Letter dated 10.12.2015 (Annexure C-18) and offered physical possession of unit No.109-MLU-172-300 to Mrs.Neeraj Kinra, complainant. The Opposite Party also placed on record Partial Completion Certificate dated 16.10.2015 (Annexure C-15) to prove regarding the completion of the amenities at the site.

12. No doubt, a plea is taken by Counsel for the Opposite Party that since the Opposite Party have already obtained Partial Completion Certificate (Annexure C-15) in respect of the project, in question, as such, it could very well be said that the development at site was complete and that the Opposite Party was in possession of all the necessary approvals/sanctions and was ready to offer/deliver possession of the unit to the complainant. It may be stated here that perusal of Partial Completion Certificate dated 16.10.2015 (Annexure C-15) clearly goes to show that the same was issued subject to certain conditions i.e. the Opposite Party shall abide by all the necessary permissions/sanctions/approvals from the PSPCL, PPCB, etc. It is the duty of the Opposite Party to comply with all the conditions, mentioned in the Partial Completion Certificate, before seeking final completion certificate. It is pertinent to mention here that the complainant has also placed on record alongwith her rejoinder copy of information obtained from GMADA under RTI (Annexure C-21), which reads thus :-

“With regard to information asked for on the subject cited and letters under reference it is informed that as per official record plot No.169 to 180 (Mixed Land Usage Pocket), Sector 109, MUL do not fall in the area for which partial completion has been issued to the promoter company.”

According to the Opposite Party, physical possession of plot bearing No.172, Sector 109 was offered to the complainant but she did not take the same. Moreover, as per afore-extracted information obtained from RTI, it is clearly proved that the **plot of the complainant did not fall in the area, for which, partial completion has been issued to the Company**. Thus, it could very well be said that the offer of possession made by the Opposite Party, was a mere paper possession and nothing more than that. The plea taken by Opposite Party, in this regard, therefore, being devoid of merit, is rejected.

13. The next question that falls for consideration, is, as to whether, the complainant was bound to accept offer of possession, in respect of the unit, in question, when the same was offered to her vide possession offer letter dated 10.12.2015 (Annexure C-18), i.e. after long delay of more than 5 years, and that too, in the absence of any force majeure circumstances. It may be stated here that non-delivery of possession of the unit, in question, by the stipulated date, is a material violation of the terms and conditions of the Agreement. It is not the case of the Opposite Party that the said delay occurred, on account of force majeure circumstances, met by it, on account of some stay or any other valid reason. Under similar circumstances, this Commission, in the case of Brig Ajay Raina (Retd.) and another Vs. M/s Unitech Limited, Consumer Complaint No. 59 of 2016, decided on 24.05.2016, while relying upon the judgments rendered by the Hon'ble National Commission, held as under:-

*“ Further, even if, it is assumed for the sake of arguments, that offer of possession, was made to the complainants, in July 2015 i.e. after a delay of about three years, from the stipulated date, even then, it is not obligatory upon the complainants to accept the same. It was so held by the National Commission in Emaar MGF Land Limited and another Vs. Dilshad Gill, III (2015) CPJ 329 (NC). Recently also, under similar circumstances, in the case of M/s. Emaar MGF Land Ltd. & Anr. Vs. Dr.Manuj Chhabra, First Appeal No.1028 of 2015, decided on 19.04.2016, the National Commission, held as under:-*

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

*The principle of law laid down in the aforesaid cases is fully applicable to the present case. It is therefore held that the complainants could not be held guilty, of filing the present complaint, seeking refund of the deposited amount, alongwith interest and compensation, as possession of the unit was not offered to them by the stipulated date.*

The complainant has also cited the judgment passed by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi titled as ‘ **Emaar MGF Land Ltd. & Anr. Vs. Dyal Singh,**



**First Appeal No.462 of 2014, decided on 03.07.2015** .’ The relevant portion of the judgment reads thus :-

“16. Admittedly, appellants did not offer possession of the apartment within the prescribed period, in terms of Clause 21 of the “Apartment Buyer’s Agreement”, Moreover, no explanation has been given by the appellants as to why they did not offer the possession of the apartment by the stipulated period, though respondents had paid substantial amount. As per copy of the Statement of Account filed by the appellants, as on 04-Sep-2012 (Page No.133 of Paper Book of F.A. No.462 of 2014), the respondent has paid a sum of Rs.41,45,068/- out of the total sale price of the apartment, which was Rs.48,65,580.50. Thus, deficiency on the part of the appellants started right from that very moment. It is an admitted fact, that as per the agreement possession of the apartment was to be handed over latest by 23.8.2011. But the appellants admittedly offered the possession of the apartment for the first time only in the year 2013. When the appellants did not offer the possession of the apartment in question within the specified period, under these circumstances, the respondents were fully justified to refuse the offer of possession, as late as in the year 2013. Thus, appellants themselves have violated the relevant terms and conditions with regard to handing over of the possession. Now it does not lie in their mouth to blame the respondents for their own negligence (i.e. of the appellants). Therefore, appellants by not delivering the legal physical possession of the apartment within the prescribed period, are not only deficient in rendering service but are also guilty of indulging into unfair trade practice. The appellants in the present case are enjoying the hard earned money of the respondents since 2008. Now on one pretext or the other, appellants do not want to refund the same, though negligence on the part of the appellants, is writ large in this case.”

The aforesaid appeal was dismissed by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi with punitive damages. Aggrieved against the aforesaid order, Emaar MGF Land Limited filed Special Leave to Appeal (C) No(s). 32492/2015 before the Hon'ble Supreme Court of India and the same was also dismissed.

In view of the above, it is held that since there was a material violation on the part of the Opposite Party, in not handing over physical possession of the unit, complete in all respects, by the stipulated date, as mentioned in the Agreement, the complainant was at liberty, not to accept the offer made after a long delay, and on the other hand, was right by seeking refund of the amount deposited, alongwith interest and compensation, by way of filing the instant complaint.

14. The next question, that falls for consideration, is, as to within which period, the delivery of possession of the plot, was to be given to the complainant. According to Clause 8 of the Plot Buyer’s Agreement (Annexure C-3), subject to force majeure conditions and reasons, beyond the control of the Opposite Party, it was to deliver possession of the plot, in question, within a period of 2 years, from the date of execution of the Agreement, but not later than 3 years. It is, thus, evident, from this Clause, that the Opposite Party was required to deliver possession of the plot, in question, in favour of the complainant, within the maximum period of 3 years, from the date of execution of the Plot Buyer’s Agreement dated 20.06.2007, i.e. latest by 19.06.2010. Even, Possession Offer Letter dated 10.12.2015 (Annexure C-18) issued to the complainant is only a paper possession and nor more than that. So, it is clearly proved that the Opposite Party failed to deliver possession of the plot to the complainant, within the stipulated period, as mentioned in the

Agreement. On the other hand, the Opposite Party has already received the entire sale consideration i.e. Rs.38,77,854/-, towards the said plot, as is evident from the statement of account (Annexure C-5). By making a misleading statement, that possession of the plot, was to be delivered within a maximum period of 3 years, from the date of execution of the Agreement, and by not abiding by the commitments, made by the Opposite Party, it (Opposite Party) was not only deficient, in rendering service, but also indulged into unfair trade practice.

15. The next question, that falls for consideration, is, as to whether, the re-allottee/transferee cannot claim any compensation or interest for delay in allotment. This issue was already decided by this Commission vide order dated 02.06.2016 in **Complaint Case No.94 of 2015 titled as D.S.Dhanda Vs. DLF Homes Panchkula Private Limited & Anr.** (alongwith two more complaints). The relevant portion of this judgment reads thus :-

“26. Another additional argument was raised by Counsel for the opposite parties, while placing reliance on a case titled Haryana Urban Development Authority Vs. Raje Ram, Civil Appeal No.2381 of 2003, decided on 23.08.2008, by the Hon’ble Supreme Court, to the effect that since in consumer complaints no.158 of 2016 and 159 of 2016, the complainants are subsequent allottees and when they had purchased the units, in question, in re-sale, delay in delivery of possession had already been caused and further delay was in their notice, as such, they are not entitled to any compensation. It is not in dispute, that the complainants, in the consumer complaints, referred to above, had purchased the units, in resale, from the original owners. Both the sale transactions were endorsed by the opposite parties, in favour of the complainants. No new conditions were imposed, at the time of transfer of the said units, in the name of the complainants, in the said complaints and the conditions already imposed vide the original Agreements, were kept intact. Not only this, when the complainants in the said consumer complaints, have purchased the units, even by that time, extended period to handover possession, has not yet expired. The purchaser(s) can reasonably expect that as per promise made with the original allottee(s), possession of the unit(s) will be delivered in time or may be within the extended period, if agreed. However, it was not done. It is well settled law that once the property is transferred/endorsed, in the name of the buyer from the original owner, he/she (buyer), is vested with all the rights and interests, accrued in favour of his/her predecessor(s), as he/she stepped into her/his shoes. It was also so said by the National Consumer Commission, New Delhi in case Vatika Limited Vs Mr. Rajneesh Aggarwal, REVISION PETITION NO. 525 OF 2013, decided on 22.07.2014 , wherein the complainant was the fourth subsequent allottee. In that case also, the builder relied upon Haryana Urban Development Authority's case (supra) , in support of his contention. In that case, the National Commission, held as under:-

“So far as the case of **Raje Ram** is concerned, the facts of the present case are totally different. In the present case, the respondent/complainant had purchased the apartment in question from the first transferee on 29.4.2006 when the construction had not been completed and **purchase/transfer of the apartment was duly approved by the petitioner company after charging Rs.65,840/- as transfer charges.** In the circumstances, **the petitioner company could not deny its role as a service provider to the respondent/complainant and has to be held liable for any deficiency in service with reference to the terms and conditions of the agreement which was made equally applicable to the complainant also consequent upon the approval of the assignment by the petitioner company on**

**30.4.2006 on payment of the transfer charges to the petitioner company.** For the reasons stated above, we do not find any merit in the revision petition and the same is dismissed accordingly but with no order as to costs.”

In its written statement, the Opposite Party stated that as per settled law by the Hon'ble Supreme Court, a re-allottee cannot claim any compensation or interest for delay in allotment but the Opposite Party has failed to mention the name of the judgment of the Hon'ble Supreme Court of India to prove this fact. It is pertinent to note that the original allottee (Mr. Atul Kinra) and the complainant (Mrs. Neeraj Kinra) are husband & wife and they can transfer the plot, after payment of the requisite fee. Moreover, the complainant stepped into the shoes of the initial allottee (Atul Kinra) and she is certainly entitled for the compensation or interest. So, we are of the view that the aforesaid case, decided by the National Commission is fully applicable to the present case. In view of the above, the plea taken by the Opposite Party in its written statement, is being devoid of any merit and is rejected.

16. The next question, that falls for consideration, is, as to whether, the complainant is entitled for refund of the amount of Rs.38,77,854/-, as claimed by her, towards the unit, in question. It is the admitted fact that the complainant paid an amount of Rs.38,77,854/- in respect of her unit, as is evident from Statement of Account (Annexure C-5). The Plot Buyer's Agreement was executed between the parties on 20.06.2007 and as per Clause 8 of the said Agreement, possession of the unit was to be delivered within a maximum period of 3 years from the date of execution of the Agreement i.e. latest by 19.06.2010 but the Opposite Party failed to deliver physical possession of the earlier unit as well as reallotted unit, in question, complete in all respects, to the complainant, within the stipulated period. Even the Opposite Party had no right, to retain the hard earned money of the complainant, without rendering her, any service. In our considered opinion, the complainant is entitled to refund of amount of Rs.38,77,854/-, deposited by her.

At the time of arguments, Counsel for the Opposite Party stated that when the complainant sought refund of the amount, forfeiture clause is applicable upon her. In a similar case relating to delayed possession, titled as **Guninder Jeet Singh Salh Vs M/s Emaar MGF Land Limited and another, Consumer Complaint No. 113 of 2015**, decided by this Commission on 23.09.2015, noting ratio of the judgment of the Hon'ble National Consumer Disputes Redressal Commission, New Delhi, in the case of **Emaar MGF Land Limited and another Vs. Dilshad Gill, III (2015) CPJ 329 (NC)**, it was said that the consumer can claim refund. The National Commission was dealing with a similar situation, in the above case. In that case also, possession was not offered within the stipulated period. The consumer complaint was filed by the complainant, before this Commission, claiming refund of the amount paid by him. This Commission took it as a case of rescinding of contract and allowed the Opposite Parties to forfeit 10% of the deposited amount. The above named builder went in appeal, which was dismissed, by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi, holding as under:-

“It is apparent from the above clause, that possession of the apartment was to be handed over within a period of 36 months from the date of allotment, with grace period of 3 months. Admittedly, no possession was offered to the original allottee or to the respondent, till 26.11.2011 when she stepped into the shoes of original allottee. Thus, on the date of accepting the present

respondent as allottee on 26.11.2011, the apartment in question was not complete.

**23 .** As appellants did not offer possession within the period prescribed under Clause 21 of the 'Apartment Buyer Agreement', the deficiency on the part of appellants, started right from that very moment. It is an admitted fact, that while offering the possession even in the year 2013, appellants sent letter dated 13.5.2013 and respondent was asked to deposit sum of Rs.3,05,969.70, within 30 days. When payment of the instalments is construction linked, then we fail to understand as to how before completing the construction appellants demanded the aforesaid amount. This act of appellants goes on to show, that even on 13.5.2013 construction of apartment was not complete. It was only vide letter dated 16.8.2013, appellants offered possession of the apartment, subject to certain payments.

**24 .** Thus, appellants themselves have violated the material conditions with regard to handing over of the possession, now it does not lie in their mouth to demand further payment from the respondent. Even assuming for arguments sake, that payment as demanded vide letter dated 16.8.2013 was due, but the respondent was fully justified in not making the payment, when appellants failed to complete the construction and handover the possession, within the agreed period. Appellants could not force the respondent, after having accepting money from the original allottee in the year 2006 and part payment from present respondent in the year 2011, to accept possession of the apartment in the year 2013, which was against the terms of the Agreement. The above facts clearly goes on to show, that appellants have been enjoying the substantial amount of money received by them in the year 2006, till 2013. Therefore, this plea of appellants, that they have done their part of the duty and it is the respondent who is defaulter, does not hold any water.

**25 .** The deficiency on the part of appellants is writ large in this case. We may note, that under such circumstances there was no occasion for the State Commission to have deducted 10% of the deposited amount as respondent was not at fault at all. On the other hand, appellants were deficient when they themselves have violated the terms and conditions of 'Apartment Buyer Agreement', The case law relied by ld. counsel for appellants are not applicable at all to the facts of the present case."

It was clearly stated by the Hon'ble National Commission, in Emaar MGF Land Limited and another Vs. Dilshad Gill's case (supra) , that when the promoter has violated material condition, in not handing over possession of the unit, in time, it is not obligatory for a purchaser to accept possession after that date. It is clearly proved that the Opposite Party has not fulfilled its part of the Agreement and failed to develop the infrastructure alongwith other amenities and failed to give physical possession of the unit to the complainant, complete in all respects, within the stipulated period. So, it is clearly proved that the Opposite Party is, thus, in breach of its part of the obligation and is deficient in providing services even after receipt of the huge amount and, as such, the

Opposite Party is not entitled to forfeit any amount, and refund the deposited amount to the complainant.

17. The next question, that falls for consideration, is, as to whether, the complainant is entitled to interest, on the deposited amount of Rs.38,77,854/-, if so, at what rate. The complainant was deprived of her hard earned money, to the tune of Rs.38,77,854/-, on the basis of misleading information, given by the Opposite Party, that it would be hand over legal physical possession of the unit, in question, within a maximum period of 3 years from the date of execution of the Agreement. The Opposite Party only offered paper possession. However, the Opposite Party neither delivered physical possession of the unit to the complainant, after receipt of the huge amount from the complainant, within the stipulated period, as mentioned in the Agreement. The complainant was, thus, caused financial loss. Hard earned money, deposited by the complainant, towards price of unit, in question, was utilized by the Opposite Party, for a number of years. Had this amount been deposited by the complainant, in some bank, or had she invested the same, in some business, she would have earned handsome returns thereon. It is therefore, held that the Opposite Party, by neither delivering possession of the unit, complete in all respects, by the stipulated date, nor refunding the amount to the complainant, was not only deficient, in rendering service, but also indulged into unfair trade practice. No doubt, as per Clause 3 of the Agreement, the Opposite Party was charging interest @15% per annum compounded from the complainant. Under these circumstances, in our considered opinion, if interest @15% P.A. compounded, on the amount deposited by the complainant, from the respective dates of deposits, is granted, that will serve the ends of justice.

18. 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 caused to her. It may be stated here, that according to Section 14(d) of the Act, the Consumer Foras can grant compensation, to the complainant(s). The word 'compensation' is again of very wide connotation. It has not been defined, in the Act. According to the dictionary, it means compensating or being compensated, thing given as recompense. In legal sense, it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss. Therefore, when the Consumer Foras have been vested with the Jurisdiction to award the value of goods or services and compensation, it has to be construed widely enabling them (Consumer Foras), to determine compensation, for any loss or damage suffered by the consumers, which in law is otherwise, the wide meaning of 'compensation'. The provision, in our considered opinion, enables the consumers to claim and empowers the Consumer Foras to redress any injustice done to the complainant(s). The Commission or the Forum in the Act, is, thus, entitled to award not only the value of the goods or services, but also to compensate the consumers, for injustice suffered by them. Similar principle of law was laid down, in Ghaziabad Development Authority v. Balbir Singh, II (2004) CPJ 12 (SC)=III (2004) SLT 161=(2004) 5 SCC 65 . In the instant case, the complainant suffered a lot of mental agony and harassment, at the hands of the Opposite Party, for a number of years, as it neither delivered physical possession of earlier unit as well as reallotted unit to her, complete in all respects, nor refunded the amount to her, despite repeated requests. The complainant purchased the unit, with the hope to have a roof over her head, by raising construction thereon, but her hopes were dashed to the ground. The complainant, thus, underwent a lot of mental agony and harassment, on account of the acts of omission and commission of the Opposite Party. Compensation to the tune of Rs.3,00,000/- if granted, shall be reasonable, adequate and fair. The complainant, is, thus, held entitled to compensation, in the sum of Rs.3,00,000/-.

19. No other point, was urged, by the Counsel for the parties.

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

- i. To refund the amount Rs.38,77,854/-, to the complainant, alongwith interest compounded @ 15% per annum, from the respective dates of deposits onwards, within 45 days, from the date of receipt of a certified copy of this order.
- ii. To pay compensation, in the sum of Rs.3,00,000/- for causing mental agony and harassment, to the complainant, within 45 days, from the date of receipt of a certified copy of this order.
- iii. To pay cost of litigation, to the tune of Rs.50,000/- to the complainant.
- iv. In case, the payment of amounts, mentioned in Clauses (i) and (ii), is not made, within the stipulated period, then the Opposite Party shall be liable to pay the amount mentioned in Clause (i) with interest compounded @ 18% P.A., instead of interest compounded @ 15% P.A., from the respective dates of deposits, till realization, and interest compounded @ 15% P.A., on the amount of compensation, mentioned in Clause (ii), from the date of filing the complaint, till realization, besides payment of litigation costs.

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

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

Pronounced.

August 3, 2016 .

Sd/-

**[JUSTICE JASBIR SINGH (RETD.)]**

**[PRESIDENT]**

Sd/-

**[DEV RAJ]**

**MEMBER**

Sd/-

**(PADMA PANDEY)**

**MEMBER**

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