

# HOUSING SECTOR IN INDIA AND ISSUES CONCERNING BENEFICIARIES



# HOUSING-MEANING

- “Housing Construction” included in the definition of “Service” of Consumer Protection Act, 1986 by **Ordinance no 24 of 1993.**
- According to Black Law Dictionary: “House” means a dwelling; a building designed for the habitation and residence of men.
- Buildings or structures that individuals and their family may live in that meet certain federal regulations.
- According to 2(e) The Real Estate (Regulation and Development Act, 2016 : “apartment” whether called block, chamber, dwelling unit, flat, office, showroom showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land , used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;
- According to Section 2(j) of The Real Estate (Regulation and Development Act, 2016:"building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes.

# Construction Industry

3

- **Construction Industry** is one of the most booming industries in the whole world. This industry is mainly an urban based one which is concerned with preparation as well as construction of real estate properties. The repairing of any existing building or making certain alterations in the same also comes under **Construction Industry**. With the process of development, the migration of people takes place from the rural to urban areas. This phenomenon is most significantly observed in the "Asian Tiger" countries, China and India. Thus, the **Construction Industry** is also on a rise in such countries.
- This industry can be categorized into three basic categories namely:-
  - ❖ Construction involving heavy and civil engineering:  
The construction of large projects such as bridge, road, etc comes under this category.
  - ❖ General Construction:  
The construction works that involve building of real estate ones such as residential or commercial real estate assets, etc.
  - ❖ Construction projects involving specialty trades:  
Construction works that involve building up of specialized items namely, electric related works, works on woods, etc

# Housing Construction by Private Builder or Statutory Body is a Service within the meaning of Section 2(1)(o)-Defect of any kind is deficiency in service or Unfair trade practice

4

- **LUCHNOW DEVELOPMENT AUTHORITY V/S M.K.GUPTA**

- **(1994) 1 SCC 243**

- “The housing construction or building activity carried on by private or statutory body was not included specifically in the definition of the word “service” within meaning of clause (o) of the subsection 1 of section 2 of the Act. However the expression ‘housing construction’ in the definition of “ service” was included by Ordinance no 24 of 1993. The entire purpose of widening definition was to include in it, not only to cover day to day buying and selling activity undertaken by a common man but also such activities which are otherwise not commercial in nature yet they partake character in which some benefit is conferred on the consumer. Construction of a house or a flat is for the benefit of person for whom it is constructed. He may do it himself or higher services of a builder or contractor. The latter being for consideration is service as defined in the Act. Similarly when a statutory Authority develops land or allots a site or constructs a house for the benefit of a common man it is as much service as by a builder or contractor, the one is contractual service and other statutory service. If the service is defective or it is not what was represented then it would be unfair trade practice as defined in the Act”.

# M.K.Gupta Case

contd..

5

- 3...“In Oxford Dictionary a consumer is defined as, ‘a purchaser of goods or services’. In Black's Law Dictionary it is explained to mean, "one who consumes. Individuals who purchase, use, maintain, and dispose of products and services. A member of that broad class of people who are affected by pricing policies, financing practices, quality of goods and services, credit reporting, debt collection, and other trade practices for which state and federal consumer protection laws are enacted. The Act opts for no less wider definition. It reads as under: consumer' means any person who,-
  - (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
  - (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person;
  - [Explanation.- For the purposes of sub-clause (i), 'commercial purpose' does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;]

# M.K.Gupta Case

contd..

6

- It is in two parts. The first deals with goods and the other with services. Both parts first declare the meaning of goods and services by use of wide expressions. Their ambit is further enlarged by use of inclusive clause. For instance, it is not only purchaser of goods or hirer of services but even those who use the goods or who are beneficiaries of services with approval of the person who purchased the goods or who hired services are included in it. The legislature has taken precaution not only to define 'complaint', complainant', 'consumer' but even to mention in detail what would amount to unfair trade practice by giving an elaborate definition in clause (r) and even to define 'defect' and 'deficiency' by clauses (f) and (g) for which a consumer can approach the Commission. The Act thus aims to protect the economic interest of a consumer as understood in commercial sense as a purchaser of goods and in the larger sense of user of services. The common characteristics of goods and services are that they are supplied at a price to cover the costs and generate profit or income for the seller of goods or provider of services. But the defect in one and deficiency in other may have to be removed and compensated differently. The former is, normally, capable of being replaced and repaired whereas the other may be required to be compensated by award of the just equivalent of the value or damages for loss". (emphasis supplied)

# M.K.Gupta Case

contd..

7

- 4...“What is the meaning of the word 'service'? Does it extend to deficiency in the building of a house or flat? Can a complaint be filed under the Act against the statutory authority or a builder or contractor for any deficiency in respect of such property. The answer to all this shall depend on understanding of the word 'service". The term has variety of meanings. It may mean any benefit or any act resulting in promoting interest or happiness. It may be contractual, professional, public, domestic, legal, statutory etc. The concept of service thus is very wide. How it should be understood and what it means depends on the context in which it has been used in an enactment. Clause (o) of the definition section defines it as under:
  - " service' means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;“
  - It is in three parts. The main part is followed by inclusive clause and ends by exclusionary clause. The main clause itself is very wide. It applies to any service made available to potential users. The words 'any' and 'potential' are significant. Both are of wide amplitude. The word 'any' dictionarily means 'one or some or all'. In Black's Law Dictionary it is explained thus, "word ,any' has a diversity of meaning and may be employed to indicate 'all' or ,every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and the subject- matter of the statute". The use of the word ‘any' in the context it has been used in clause (o) indicates that it has been used in wider sense extending from one to all. The other word 'potential' is again very wide. In Oxford Dictionary it is defined as 'capable of coming into being, possibility'. In Black's Law Dictionary it is defined as "existing in possibility but not in act. Naturally and probably expected to come into existence at some future time, though not now existing; for example, the future product of grain or trees already planted, or the successive future instalments or payments on a contract or engagement already made." In other words service which is not only extended to actual users but those who are capable of using it are covered in the definition.

# M.K.Gupta Case

contd..

8

- The clause is thus very wide and extends to any or all actual or potential users. But the legislature did not stop there. It expanded the meaning of the word further in modern sense by extending it to even such facilities as are available to a consumer in connection with banking, financing etc. Each of these are wide-ranging activities in day to day life. They are discharged both by statutory and private bodies. In absence of any indication, express or implied there is no reason to hold that authorities created by the statute are beyond purview of the Act. When banks advance loan or accept deposit or provide facility of locker they undoubtedly render service. A State Bank or nationalised bank renders as much service as private bank. No distinction can be drawn in private and public transport or insurance companies. Even the supply of electricity or gas which throughout the country is being made, mainly, by statutory authorities is included in it. The legislative intention is thus clear to protect a consumer against services rendered even by statutory bodies. The test, therefore, is not if a person against whom complaint is made is a statutory body but whether the nature of the duty and function performed by it is service or even facility”.(emphasis supplied)



# AREA OF CONCERNS:

## 1) Allotment not made:

9

- **Chandigarh Housing Board v. Avtar Singh and Others**  
**(2010) 10 SCC 194**

In the instant case the Administrator, Union Territory, Chandigarh framed a scheme for allotment of land to Co-Operatives House Building Societies to Chandigarh Housing Board. Later, Finance Secretary, Chandigarh Administration issued a Memo dated 9-6-1993 and directed that if any member of the society was to seek refund, then 10% out of 25% of the earnest money should be deducted as calculated on reduced density. Thereafter, the board directed the societies to deposit the balance 15% earnest money along with 18% interest. Although the members of the Societies paid the balance earnest money and 18% interest, the Board did not take effective steps for allotment of land to the Societies. On non-allotment of lands to societies members applied for refund of amounts paid. The Board made refund of earnest money but after deducting 10% and declining refund of 18% paid by the said members in accordance with instructions issued by the Finance Secretary of the State Administration.

*Whether the members of the Societies, who would have been benefited by the allotment of land under the scheme were 'consumer' within the meaning of section 2 (1) (d) of the Act- Held, the definition of 'second part of' consumer' includes the beneficiary of such services other than the person who hires or avails of the services*

*Compensation can be awarded by the Consumer Forums even in cases of service rendered by statutory and public authorities.*

**Held:**

The members of the Societies had every right to complain against illegal, arbitrary and unjustified forfeiture of 10% earnest money and non-refund 18% interest and the District Consumer Forum did not commit any jurisdictional error by entertaining the complaints.

## 2) Defects in Service

10

- **H. P. Housing Board Appellant v. Varinder Kumar Garg and another Respondents. (AIR 2004 SC 4168)**

Public body was acting in blatantly callous and corrupt manner. Allotment of Flat to respondent -Consumer by Housing Board.

Major defects found in construction. Material used found to be of poor quality. Flat found to be inhabitable unless major repairs carried out .

Neither action taken by Housing Board to rectify and/or remove defects in spite of report to said effect submitted by Architect of Board . Nor action taken against erring officers of Board. Conduct of Housing Board was shocking.

Thus , Option given to respondent to either keep Flat along with compensation of Rs. 60,000/- for carrying out repairs - Or refund of amount paid towards cost of Flat.

- **HARYANA STATE AGRICULTURAL MARKETING BOARDV/S BISHAMBER DAYAL GOYAL AND ORS**
  - **2014 LawSuit(SC) 201**

- Deficiency in service - Declaration of sub-market yard in 1980. Area transferred to State Agricultural Market Board in 1986. Allotment of plots to dealers in grain.

- Payment of installments defaulted . Alleged ground of failure on part of Board to provide basic amenities.

- Demand raised for balance, with interest and penalty. Consumer complaint on grounds of failure to notify the area as market area, to develop the area and provide basic amenities. The plots were auctioned for auctioning and trading in grains. Even if providing of amenities was not a condition, the Board was obliged to facilitate the utilization and enjoyment of plots. However, allottees cannot post-pone payment of installments on ground that amenities were not provided. There was clear deficiency on part of the Board in not providing facilities for more than a decade.

□ Thus, considering the surrounding circumstances wherein the appellant has been unable to develop the area for more than two decades and the resultant loss suffered by the respondents, we are of the opinion that in the present situation, there is a need for proportionate relief as the levy of penal interest and other charges on the respondents will be grossly unfair.

### 3) Illegal construction in violation of Sanctioned Plan

12

- **Esha Ekta Apartments Co-Operative Housing Society Ltd And Others v. Municipal Corporation of Mumbai and Others**  
**(2013) 5 SCC 357**

❖ The Hon'ble Supreme court observed:-

The conduct of the builder in the present case deserves to be noticed. He knew it fully well what was the permissible construction as per the sanctioned building plans and yet he not only constructed additional built-up area on each floor but also added an additional fifth floor on the building, and such a floor was totally unauthorised. In spite of the disputes and litigation pending he parted with his interest in the property and inducted occupants on all the floors, including the additional one. Probably he was under the impression that he would be able to either escape the clutches of the law or twist the arm of the law by some manipulations. This impression must prove to be wrong.

Any person who undertakes or carries out development or changes the use of land without permission of the Planning Authority is liable to be punished with imprisonment. At the same time, the Planning Authority is empowered to require the owner to restore the land to its original condition as it existed before the development work was undertaken. The scheme of these provisions does not mandate regularisation of construction made without obtaining the required permission barring violation thereof.

Notwithstanding rejection of the revised building plans and issuance of a stop-work notice, the developers/builders continued to construct the buildings. The buyers of the flat were fully aware of the fact that the revised plans submitted by the architect had not been approved by the planning authority and the builders had foretold them about the consequence of rejection of the revised plans.

In this scenario, the only remedy available to them is to sue the lessee and the developer/builder for return of the money and/or damages and they did not seek a direction for regularisation of the illegal and unauthorised construction made by the developers/builders

❖ Thus Apex Court held that:-

Illegal constructions cannot be regularised and orders refusing regularization of illegal construction cannot be quashed. Further, directed that the State government and its functionaries/officers is also the officers/employees of the Corporation shall not put any obstruction in the implementation of demolish orders.

The flat buyers shall be free to avail appropriate remedy against the land developers/builders.

### 3) Illegal construction in violation of Sanctioned Plan

14

- **Pratibha Co-operative Housing Society Ltd. and another Vs. Respondent: State of Maharashtra and others**

**[(1991) 3 SCC 341]**

- Petition filed against action whereby without considering proposals of petitioner, respondent entrusted work of demolition of upper eight floors of building to appellant/company –
- Admittedly, six floors have been completely demolished and part of seventh floor has also been demolished
- Held by Supreme Court that:
  - Tendency of raising unlawful constructions and unauthorised encroachments is increasing and such activities are required to be dealt with by firm hands.
  - Such unlawful constructions are against public interest.
  - Violation of Floor Space Index in present matter was not minor. Such unlawful construction was made by petitioner.
  - Thus the order for demolition of eight floors has been substantially carried out.

- **Dipak Kumar Mukherjee Vs Kolkata Municipal Corporation and Ors. (2012) 10 SCALE 29**

- Violation of sanctioned planned of building.
- Whether, Respondent had violated sanctioned plan by making unauthorized construction of buildings.
- Held:-
  - it was observed that Respondent No. 7 was guilty not only of violating sanctioned plan and relevant provisions of Kolkata Municipal Corporation Act, 1980 and Rules framed, but also of cheating those who purchased portions of unauthorized construction under bona fide belief that Respondent No. 7 had constructed building as per sanctioned plan
  - Therefore it was necessary that Respondent No. 7 was directed to compensate them by refunding cost of flat, with interest.
  - Further while preparing master plans/zonal plans, Planning Authority took into consideration prospectus of future development and accordingly provided for basic amenities

- Thus unauthorized construction of buildings not only destroyed concept of planned development which was beneficial to public but also places unbearable burden on basic amenities and facilities provided by public authorities - Hence construction of such buildings became hazardous for public and created traffic congestion
- **Ratio Decidendi:-**
  - **Court shall pass order of demolition of unauthorized construction of building if it is based on violated sanctioned planed."**



## 4) Delay in Delivery

17

Principles laid down in **Balbir Singh case**, directed to be followed in future.

- **Haryana Urban Development Authority V/S Darsh Kumar & Others**
  - **(2005) 9 SCC 449**

Allotment of plot by Development Authority. Allottee paid all the dues. Long delay in delivery of possession & that too of an alternate plot at a higher price.

A body like a development Authority if not in a position to deliver the allotted plot. HELD: Must offer an alternate plot immediately at the same price in the same sector or near thereto.

HELD: Considering the very long delay in giving possession, compensation @ 12% from the date of deposit till delivery of possession towards mental agony/harassment & for escalation in construction costs awarded.

Where the amounts had still not been paid rate of interest applicable. Held:- would be 15% from 17-3-2004[date of decision of *Balbir Singh case*] till payment. Decision herein given in view of the special features of the case directed not to be taken as precedent.

# 5) Compensation:

18

- **Ghaziabad Development Authority v/s Balbir Singh**

- **(2004) 5 SCC 65**

- Held “jurisdiction of National Commission/Forums extends to cases of service rendered by statutory & public authorities. Such authorities become liable to compensate for “misfeasance in public office” and Commission/Forum has statutory obligation to award compensation”.
- M.K.Gupta case reiterated.
- “Compensation has not been defined in the Act. According to dictionary it means, 'compensating or being compensated; thing given as recompense;'. In legal sense it may constitute actual loss or expected loss and may extend to physical mental or even emotional suffering, insult or injury or loss.

The word  
Compensation  
has wide  
connotation  
Quoted From  
M.K.Gupta's  
Case with  
approval.

- Therefore, when the Commission has been vested with the jurisdiction to award value of goods or services and compensation it has to be construed widely enabling the Commission to determine compensation for any loss or damage suffered by a consumer which in law is otherwise included in wide meaning of compensation.
- The provision in our opinion enables a consumer to claim and empowers the Commission to redress any injustice done to him. Any other construction would defeat the very purpose of the Act. The Commission or the Forum in the Act is thus entitled to award not only value of the goods or services but also to compensate a consumer for injustice suffered by him”.
- Award of compensation- Principles for- Held, liability to pay interest arises only if there is default or omission on part of the body which caused damage or prejudice. Whilst awarding interest as compensation, it must shown that there is relationship between amount awarded & the default/unjustifiable delay/harassment. Therefore necessary that there be separate awards under each head with reasons why such award is justified.

- The power & duty to award compensation does not mean that irrespective of facts of the case compensation can be awarded in all matters at a uniform rate of 18% per annum. The National Forum has been awarding interest at a flat rate of 18% per annum irrespective of the facts of each case. This is unsustainable. If the facts are gross then 18% interest could be given but the Forum must first conclude that the facts justify grant of interest at such a rate. Moreover, in all cases where interest has already been paid @ 18% irrespective of the above order, the authority will not be entitled to call upon the party to refund the amount which has already been paid.
- Plots were allotted to the housing society for its members-Allotment of price being paid. Possession however not delivered. Determination of compensation in case (a) possession is also directed to be delivered, (b) only monies directed to be returned. Held-compensation to be determined either on basis of loss of rent, or if consumer has stayed in rented premises, then on basis of rent actually paid by him.

- Moreover, compensation for harassment/injury both mental & physical may be given along with recompensing the loss.
- In case (a) compensation for harassment will necessarily have to be less since in a way party compensated by increase in value of property he is getting. In case (b) party suffering a greater loss in as much as he has been deprived of flat/plot & benefit of escalation of price thereof & therefore compensation in such cases would necessarily have to be higher.
- Construction not of good quality or incomplete. Held would be cost of putting property in good shape or completing it along with compensation for harassment.

*H.P.HOUSING BOARD V/S VARINDER KUMAR GARG & ANOTHER (2005)9SCC430 & HARYANA URBAN DEVELOPMENT AUTHORITY V/S DARSH KUMAR & OTHERS (2005)9SCC449*  
followed **BALBIR SINGH'S CASE.**

## **Haryana Urban Development Authority v. Krishna Goel** **(2005) 9 SCC 466**

In the present case, the respondent was allotted a plot. The respondent paid all dues. But the possession was not offered.

National commission increased the rate of interest to 18% per annum against 15% per annum passed by the District Forum.

The appellants had paid the interest at 12%. Also offered possession but the respondent did not take it.

Thus Apex Court held:-

- ❖ The correct rate of interest would be 12% per annum from the date of deposit repayment.
- ❖ The Respondent is entitled to liberty to take possession of the plot. If the Appellants do not give possession to the respondent without claiming any further amount, the respondent is at liberty to approach this court.
- ❖ The Forum/Commission will follow the principles laid down by this Court in the case of Ghaziabad Development Authority vs. Balbir Singh (supra) in future cases

**Bangalore Development Authority v. Syndicate Bank**  
**(2007) 6 SCC 711**

- ***Factors to be considered in awarding interest and/or compensation in case of delay in delivery of possession- Principles:***

**Held:--**

- Where development authority forms layouts and a lot plots/latch by making applications, the following general principles regulate the granting of relief to a consumer who complains of delay in delivery or non-delivery and seeks redress and under the Consumer Protection Act, 1986;
- 1) Where the development authority having received the full price, does not deliver possession of the allotted plot/flat/house within the time stipulated or within a reasonable time, or where the allotment is cancelled or possession is refused without any justifiable cause, the allottee is entitled for refund of the amount paid, with reasonable interest thereon from the date of payment to date of refund. In addition, the allottee may also be entitled to compensation, as may be decided with reference to the facts of each case.

- 2) Where no time is stipulated for performance of the contract (that is for delivery), or where time is not the essence of the contract and the buyer does not issue a notice making time the essence by fixing a reasonable time for performance, if the buyer, instead of rescinding the contract on the ground of non-performance, accepts the belated performance in terms of the contract, there is no question of any breach or payment of damages under the general law governing contracts. However, if some statute steps in and creates any statutory obligations on the part of the development authority in the contractual field, the matter will be governed by the provisions of that statute.
- 3) Where an alternative site is offered or delivered (at the agreed price) in view of its inability to deliver the earlier allotted plot/flat/house, or where the delay in delivering possession of the allotted plot/flat/house is for justifiable reasons, ordinarily the allottee will not be entitled to any interest or compensation. This is because the buyer has the benefit of appreciation in value.
- 4) Though the relationship between Development Authority and an applicant for allotment is that of a seller and buyer, and therefore governed by law of contracts, (which does not recognise mental agony and suffering as a head of damages for breach), compensation can be awarded to the consumer under the head of mental agony and suffering, by applying the principle of Administrative Law, where the seller being a statutory authority acts negligently, arbitrarily or capriciously.



- 5) Where an alternative plot/flat/house is allotted and delivered, not at the original agreed price, but by charging current market rate which is much higher, the allottee will be entitled to interest at a reasonable rate on the amount paid towards the earlier allotment, from the date of deposit to date of delivery of the alternative plot/flat/house. In addition, he may be entitled to compensation also, determined with reference to the facts of the case, if there are no justifiable reasons for non-delivery of the first allotted plot/flat/house.
- 6) Where the plot/flat/house has been allotted at a tentative or provisional price, subject to final determination of price on completion of the project (that is acquisition proceedings and development activities), the Development Authority will be entitled to revise or increase the price. But where the allotment is at a fixed price, and a higher price or extra payments are illegally or unjustifiably demanded and collected, the allottee will be entitled to refund of such excess with such interest, as may be determined with reference to the facts of the case.
- 7) Where full payment is made and possession is delivered, but title deed is not executed without any justifiable cause, the allottee may be awarded compensation, for harassment and mental agony, in addition to appropriate direction for execution and delivery of title deed.
- 8) Where the allotment relates to a flat/house and construction is incomplete or not in accordance with the agreed specifications, when it is delivered, the allottee will be entitled to compensation equivalent to the cost of completing the building or rectifying the defects.

- 9) The quantum of compensation to be awarded, if it is to be awarded, will depend on the facts of each case, nature of harassment, the period of harassment and the nature of arbitrary or capricious or negligent action of the authority which led to such harassment.
  - 10) While deciding whether the allottee is entitled to any relief and in moulding the relief, the following among other relevant factors should be considered :
    - i. whether the layout is developed on 'no profit no loss' basis, or with commercial or profit motive;
    - ii. whether there is any assurance or commitment in regard to date of delivery of possession;
    - iii. whether there were any justifiable reasons for the delay or failure to deliver possession.
    - iv. whether the complainant has alleged and proved that there has been any negligence, shortcoming or inadequacy on the part of the developing authority or its officials in the performance of the functions or obligations in regard to delivery; and
    - v. whether the allottee has been subjected to avoidable harassment and mental agony.
- **Thus, Apex Court held that “where the grievance is one of the delay in delivery of possession, and the development authority delivers the house during the pendency of the complaint at the agreed price, and such delivery is accepted by the allottee complainant, the question of awarding any interest on the price paid by him from the date of deposit to the date of possession, does not arise. The allottee who had the benefit of appreciation of price of the house, is not entitled to interest on the price paid”.**

- **Chief Administrator, H.U.D.A. & Anr. v. Shakuntla Devi**  
**(2017) 2 SCC 301**

- In the case, the Respondent alleged that in spite of paying the full price of the plot/allotment as per the terms and conditions of the allotment letter, she was not given the possession of the plot by the Appellant.
- In the case, the State Commission held that the Respondent had established deficiency of service by the Appellants as there was delay in handing over physical possession of the plot and was entitled to compensation. In appeal, the National Commission upheld the State Commission's order.

## □ **Bench's verdict**

- The Supreme Court in the case made some essential observation which are also rudimentary for awarding compensation and quantum of compensation in consumer protection cases concerning real estate matters.
  - That the *sine qua non* for entitlement of compensation is proof of loss or injury suffered by the consumer due to the negligence of the opposite party. Once the said conditions are satisfied, the Consumer Forum would have to decide the quantum of compensation to which the consumer is entitled.
  - There is a duty cast on the Consumer Forum to take into account all relevant factors for arriving at the compensation to be paid.
  - Also made reference to the case of ***Charan Singh v. Healing Touch Hospital and Others (2000) 7 SCC 668***, wherein the Apex Court held that calculation of damages depends on the facts and circumstances of each case. No hard and fast rule can be laid down for universal application.
  - That while awarding compensation, a Consumer Forum has to take into account all relevant factors and assess compensation on the basis of accepted legal principles, on moderation. It is for the Consumer Forum to grant compensation to the extent it finds it reasonable, fair and proper in the facts and circumstances of a given case according to the established judicial standards where the claimant is able to establish his charge.
  - That compensation cannot be uniform and can best be illustrated by considering cases where possession is being directed to be delivered and cases where only monies are directed to be returned. In cases where possession is being directed to be delivered the compensation for harassment will necessarily have to be less because in a way that party is being compensated by increase in the value of the property he is getting.
  - That in cases where the Consumer Forum has directed delivery of possession, the party has to a certain extent already got a benefit. The cost of the land/flat would have gone up in the meantime. Of course, even in cases, where delivery of possession has been directed there could be compensation for harassment/ loss. But such compensation has to be worked out after looking into the facts of each case and after determining the amount of harassment/loss that has been caused to the consumer.

# TIMELY DELIVERY AND QUALITY: THE KEY

29

- For customers, timely delivery and quality of construction of houses are very important.
- Most builders are hesitate to contractually commit to a project delivery time due to penalties for cases of delay in possession.
- At a time when the current market sentiment and consumer confidence is at a low, there is an utmost need to stress on fair play, quality of construction and on-time delivery. The reputation of developers hinges on these.
- The timely delivery of projects will help developers retain customer trust and confidence in these times.

- The delay in possession of their homes has been the biggest concern for the buyers of the real estate properties. For many of the homebuyers, across locations and with almost the builders, the delay has extended to almost six years or more now, with no possession in sight. In the absence of a regulator and with no rules in place, the builder-buyer battle appeared one-sided.
- Now, the real estate sector has got its own regulator from May 1, 2017, the date when the **Real Estate (Regulation Development) Act, 2016 (RERA)** became effective in the entire country. Each state and UT will have its own Regulatory Authority (RA) which will frame regulations and rules according to the Act.

# Real Estate (Regulation & Development) Act, 2016



Act came into force from 1<sup>st</sup> May, 2017

# A step closer to happy home-buying

32

"Real estate cannot be lost or stolen, nor can it be carried away. Purchased with common sense, paid for in full, and managed with reasonable care, it is about the safest investment in the world" - Franklin D. Roosevelt, US president

"The best investment on Earth is Earth" - Louis Glickman, Real Estate investor

"Don't wait to buy real estate. Buy real estate and wait"- Will Rogers, Actor



"We need action on real side (as) also on transparency on land acquisition, transparency on construction and on sales" – Former RBI Governor

- Lack of standardization and adequate consumer protection
- Lack of uniform regulatory environment
- Dearth of transparency and accountability in transactions
- High levels of risk perception by investors/ consumers
- Redundant/ Static land laws
- Consumers forced to sign on dotted lines
- Making project investment ready for REITs

Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the RE market, the resource is only curative and is not adequate to addresses all the concerns of the buyers and promoters

# Bombay HC Upholds Validity Of Real Estate (Regulation And Development) Act

34

- **Neelkamal Realtors Suburban Pvt. Ltd. and anr. V/S Union of India and ors. 2017 LawSuit(Bom) 2549**
- In a huge relief to thousands of home buyers, the Bombay High Court has upheld the constitutional validity of the Real Estate (regulation and Development) Act.
- A bench of Justice Naresh Patil and Justice RG Ketkar passed the judgment after hearing all parties in the matter and upheld the provisions of the new Act that came into effect on May 1, 2017...
- ❑ **Case Background:**
  - The petitioners are builders and developers who are aggrieved by the new provisions of the said Act which contains specific provisions to tackle problems like delay in possession, arbitrary interests levied on home buyers etc.
  - Petitioners had challenged Section 3, 5, 7, 8, 11(h), 14(3), 15, 16, 18, 22, 43(5), 59, 60, 61, 63 and 64 of the Real Estate (Regulations and Development) Act, 2016 and Rules 3(f), 4, 5, 6, 7, 8, 18, 19, 20 and 21 of the Registration of real estate projects, Registration of real estate agents, rates of interest and disclosures on website) Rules, 2017.
  - The said Act calls for prior registration of concerned projects with the Regulatory Authority under RERA, also registration of real estate agents. It defines functions of real estate agents and promoters.
  - Under the new Act, the promoters have obligations towards home buyers in case a real estate project is transferred to a third party and in case, a promoter fails to deliver possession he is liable to repay the entire amount with interest.

- Thus, the Court said- “We hold that challenge to constitutional validity of first proviso to Section 3(1), Section 3(2)(a), explanation to Section 3, Section 4(2)(l)(C), Section 4(2)(l)(D), Section 5(3) and the first proviso to Section 6, Sections 7, 8, 18, 22, 38, 40, 59, 60, 61, 63, 64 of the Real Estate (Regulation and Development) Act, 2016 fails. These provisions are held to be constitutional, valid and legal.”
- However, Section 46 (b) of the Act was set aside as it included any officer who has held the post of Additional Secretary to be eligible for membership of the two-member tribunal. Court held that the majority of the total members of the tribunal should always be judicial members.

## JURISDICTION:

36

- **Applicability of Real Estate(Regulation & Development) Act, 2016 to disputes of real estate sector pending in consumer forum**
- Section 88 of the RERA Act provides that the provisions of this Act shall be in addition to & not in derogation of any other law for the time being in force.
- Section 89 provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for time being in force.
- Section 79 bars the jurisdiction of civil courts. Bar does not extend to Tribunals.
- Section 79 refers to “courts” not to “Tribunals”.
- Thus, allottees (buyers) have a choice as to Whether they want to approach the RERA or Consumer Forum for resolution of their grievances against builders.

# SALIENT FEATURES OF THE ACT

37

In the interest of effective consumer protection, uniformity & standardisation of business practices & transactions in the real estate sector, it became necessary to have a Central legislation, namely The Real Estate(Regulation & Development Act), 2016.

The bill was passed by the Parliament on 15-3-2016 & received Assent on 25th March, 2016.

Establish Real Estate Regulatory Authorities (RERAs) for regulation & promotion of the real estate sector in state level.

Ensure sale of plot, apartment of building or sale of real estate project in an efficient & transparent manner.

Establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority.

Residential real estate projects, with some exceptions, need to be registered. On registration, the promoter must upload details of the project on the website of the RERA. These include the site and layout plan, and schedule for completion of the real estate project.

# SALIENT FEATURE OF REAL ESTATE (REGULATION & DEVELOPMENT) ACT 2016

38

Amount collected from buyers must be maintained in separate account & only be used for construction of that. The state government can alter this amount.

Right to Legal Representation on behalf of Client by Company Secretaries or chartered accountants or cost accountants or legal practitioner.

It prescribed imprisonment of up to three years for developers and up to one year in case of agents and buyers for violation of orders of Appellate Tribunals and Regulatory Authorities.

## ● PROTECTION OF BUYERS

39

- The Act prohibits unaccounted money from being pumped into the sector.
- As now, 70 per cent of the money has to be deposited in bank accounts through cheques.
- A major benefit for consumers included in the Act is that builders will have to quote prices based on carpet area and not super built-up area.
- Carpet area has been clearly defined in the Act to include usable spaces like kitchen and toilets.

# Rights & Duties of Allottees

40

## Who is an Allottee?

- Section 2(d) of Real Estate (Regulation & Development) Act, 2016 : “Allottee” in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such p , lot apartment or building, as the case may be, is given on rent;
- Thus as per s. 2(d), an allottee includes a person who acquires the said `apartment/plot’ through transfer or sale, but does not include a person to whom such plot / apartment is given on rent. The Act doesn’t include rental projects, lease / leave and license deals.

### ❖ Rights of Allottees:-

- Entitled to obtain information
- To know stage-wise time schedule.
- To claim possession
- To claim refund in case of non-completion
- To obtain documents & plans

### ❖ Duties of Allottees:-

- To make payments
- To pay interest at prescribed rate
- To participate towards formation of society/association
- To take physical possession
- To participate in registration of conveyance deed



# RERA Act, 2016: Important Limitation Periods/Deadlines for Buyers:-

41

Nature of Claim	Section	Limitation Period	Remarks
Defect in workmanship, quality or provision of services or other obligations of promoter in agreement for sale- Right for rectification/ compensation	14(3)	Defect to be brought to builder's notice within 5 years of handing over of possession.	If defect not rectified free of cost within 30 days, then compensation claim can be preferred to Adjudicating Officer. No time-limit for filing compensation claim after expiry of 30 days period.
Defective Title-Loss caused to buyer	18(2)	No limitation period. No time-barring	----
Possession	19(10)	To be taken by buyer within 2 months of issue of occupancy certificate.	-----
Structural defect- Right for rectification/compensation	14(3)	Defect to be brought to builder's notice within 5 years of handing over of possession.	If defect not rectified free of cost within 30 days, then compensation claim can be preferred to Adjudicating Officer. No time-limit for filing com. Claim after expiry of 30 days period.

# RERA Act, 2016: Important Time-limits For Builders:-

42

OBLIGATION	SECTION	TIME-LIMIT
Association of allottees- Formation	11(4)(e)	Time-limit as per local laws. In absence of local laws, within 3 months of majority of allottees having booked their plots or apartments or buildings.
Physical possession- Handing over of	18(1)	As per affidavit given by promoter under section 4(2)(1)(C)
Rectification of free of charge of structural defects or defect in workmanship, quality or provision of services or other obligations of promoter in agreement for sale	14(3)	Within 30 days of being brought to promoter's notice(provided it is brought to promoter's notice within 5 years of handing over physical possession).
Registered Conveyance deed in favour of allottees/ association of allottees- Execution of	17(2)	Time-limit as per local laws. In absence of it, within 3 months from date of issue of occupancy certificate.

# The Monopolies and Restrictive Trade Practices Act, 1969,

43

- Section 36 (a) of this Act defines Unfair Trade Practices
- **Unfair Trade Practice:**
- Misleading advertisement and False Representation.
- Falsely representing that goods and services are of a particular standard, quality, grade, composition or style.
- Falsely representing any second hand renovated or old goods as new.
- Representing that goods or services, seller or supplier have a sponsorship, approval or affiliation which they do not have.
- Making a false or misleading representation concerning need for, or usefulness of goods or services.
- Giving to public any warranty, guarantee of performance that is not based on an adequate test or making to public a representation which purports to be such a guarantee or warranty.
- False and misleading claims with respect to the price of goods or services.
- Giving false or misleading facts disparaging the goods, services or trade of another person or concern.

# Metamorphosis from MRTP, 1969 to Competition Act 2002

44

- In the wake of liberalization and privatization in early nineties, a realization gathered momentum that the existing Monopolistic and Restrictive Trade Practices Act, 1969 ("MRTP Act") was not equipped adequately enough to tackle the competition aspect of the Indian economy.
- With starting of the globalization process, Indian enterprises started facing the heat of competition from domestic players as well as from global giants, which called for level playing field and investor-friendly environment.
- Hence, need arose with regard to competition laws to shift the focus from curbing monopolies to encouraging companies to invest and grow, thereby promoting competition while preventing any abuse of market power.
- **MRTP Act repealed and is replaced by the Competition Act, 2002, with effect from September 1, 2009**
- The Ministry of Corporate Affairs, Government of India has issued a Notification dated 28<sup>th</sup> August 2009, whereby the most controversial the Monopolies and Restrictive Trade Practices Act, 1969 ("the MRTP Act") stands repealed and is replaced by the Competition Act, 2002, with effect from September 1, 2009.
- **Competition: meaning and benefits**
- *Competition is a situation in market, in which sellers independently strive for buyer's patronage to achieve business objectives. Competition and liberalization, together unleash the entrepreneurial forces in the economy. Competition offers wide array of choices to consumers at reasonable prices, stimulates innovation and productivity, and leads to optimum allocation of resources.*

# Transitional Provisions – the MRTP Act, 1969 to the Competition Act, 2002 w.e.f. September 1, 2009)

45

## 1. **MRTP Commission**

- a) The MRTP Commission will continue to exercise jurisdiction and power under the repealed MRTP Act in respect of any case or proceeding filed before 1 September 2009, for a period of two years. It will not, however entertain any new case arising under the MRTP Act on or after 1 September 2009.
- b) Upon the expiry of the specified two year period, the MRTP Commission shall stand dissolved.

## 2. **Transfer of pending cases**

- Upon the expiry of two years from 1 September 2009, cases pending before the MRTP Commission will be transferred as follows:-
  - a) **Monopolistic or restrictive trade practice cases:** All pending cases pertaining to monopolistic or restrictive trade practices, including cases having an element of unfair trade practice, shall stand transferred to the Competition Appellate Tribunal, which shall adjudicate such cases in accordance with the provisions of the repealed MRTP Act.
  - b) **Unfair trade practice cases:** All pending cases relating solely to unfair trade practices shall stand transferred to the National Commission as constituted under the Consumer Protection Act, 1986, which may in turn transfer such cases to a State Commission constituted under the said Act under circumstances it deems appropriate. These cases will be dealt with by them in accordance with the provisions of the Consumer Protection Act.
  - c) **Cases relating to giving false or misleading facts disparaging the goods, services or trade of another person under the MRTP Act:** All such pending cases shall be transferred to the Competition Appellate Tribunal which will be dealt in accordance with the provisions of repealed MRTP Act.

### 3. Investigations/proceedings undertaken by the Director General under the MRTP Act

- With effect from 1 September 2009, all pending investigations and proceedings by the Director General relating to:-
  - a) Monopolistic/ restrictive trade practices will be transferred to the Competition Commission of India (CCI), who may conduct such investigations/ proceedings in any manner it deems appropriate.
  - b) Unfair trade practices will be transferred to the National Commission under the Consumer Protection) Act 1986.
  - c) Cases giving false or misleading facts disparaging the goods, services or trade of another person will be transferred to the CCI.

# Competition Act 2002

47

## ❖ **Departure from the MRTP Act**

- In a significant departure from the letter and spirit of the MRTP Act, the Act hinges on the "Effect Theory" and does not categorically decry or condemn the existence of a monopoly in the relevant market, rather the use of the monopoly status such that it operates to the detriment of the potential and actual competitors is sought to be curbed.
- The earlier legislation, considered draconian in the changed scenario, was based on size as a factor, while the new law is based on structure as a factor, aimed at bringing relief to the players in the market.
- The Act empowers CCI to impose penalty on delinquent enterprises, whereas in the MRTP Act there were no provisions regarding such enterprises
- MRTP Act could only pass "cease and desist" orders and did not have any other powers to prevent or punish while the new law contains punitive provisions.
- MRTP Act was applicable to Private and Public sector undertakings only, whereas, the new Act extends its reach to governmental departments engaged in business activities.
- As regards agreements, compulsory registration has been done away with.
- The most path-breaking chapter in the Act has been the emphasis on Competition Advocacy that was not at all contemplated by the MRTP Act.

## ❖ OBJECTS TO BE ACHIEVED

- I. To check anti-competitive practices
- II. To prohibit abuse of dominance
- III. Regulation of combinations.
- IV. To provide for the establishment of CCI, **a quasi-judicial body** to perform below mentioned duties:
  - Prevent practices having adverse impact on competition
  - Promote and sustain competition in the market
  - Protect consumer interests at large
  - Ensure freedom of trade carried on by other participants in the market
  - Look into matters connected therewith or incidental thereto.



# THANK YOU

