



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. _____ OF 2025
(Arising out of SLP(C)Nos.27847-27848 of 2019)

**GREATER MOHALI AREA
DEVELOPMENT AUTHORITY
(GMADA) THROUGH ITS ESTATE
OFFICER (H) ... APPELLANT(S)**

VERSUS

ANUPAM GARG ETC. ... RESPONDENT(S)

J U D G M E N T

SANJAY KAROL J.

Leave Granted.

2. Under challenge in these appeals is a judgment and final order dated 1st April, 2019 passed in First Appeal Nos. 1852 of 2018 and 1853 of 2018 by the National Consumer Disputes Redressal Commission, New Delhi¹, at the instance

¹ NCDRC

of Greater Mohali Area Development Authority², who is aggrieved by the order dated 1st March, 2018 of the State Consumer Disputes Redressal Commission, Punjab, Chandigarh³, whereby the State Commission partly allowed the respondents' complaints (being CC No.438 of 2017 filed by respondent Anupam Garg; and CC No.439 of 2017 filed by respondent Rajiv Kumar) against GMADA directing the latter to refund the entire amount deposited by both parties in respect of securing flats in the residential scheme launched by it along with 8% interest thereon as also paying additional costs for mental harassment, litigation and the interest paid by the respondents to the State Bank of India, for the loans that they had secured to arrange for the funds required to be invested in the project.

3. For the sake of convenience we only illustrate the facts of CC No.438 of 2017 filed by Anupam Garg, which are similar to the facts being in CC No.439 of 2017 filed by Rajiv Kumar. The sequence of events and background (as per CC 438 of 2017), as have been culled out by the Commissions, leading up to these appeals are:

3.1 GMADA launched a scheme of residential flats termed 'Purab Premium Apartments' to be constructed in the Sector 88 locality, at Mohali in the year 2011.

² GMADA

³ State Commission

Anupam Garg secured an application form for a 2-BHK + Servant Room Residential Apartment-Type II upon payment of 10% of the total consideration of ₹ 55 lakhs, i.e., ₹ 5,50,000/- as earnest money.

3.2 The allotment of the flats took place through a ‘draw of lots’ on 19th March, 2012. He was successful and a Letter of Intent⁴ was issued in his favour on 21st May, 2012. It provided details regarding price, payment schedule, possible plans of payment, locations where payment can be deposited, particulars of ownership, possession, management and maintenance and other general terms and conditions. The relevant extracts of the LOI are as follows:

“PAYMENT SCHEDULE

2.1 For Initial 30%

(i) Payment of Rs.1100000 (Eleven Lakhs Only) being 20 % price of the apartment is to be made by 22.6.2012 to complete 30% of the apartment.

(ii) In case of failure to make the payment within stipulated period, the amount paid shall be refunded with 10% deduction and allotment cancelled. However, this period can be further extended up to 30 days with 2% Penalty, up to 60 days with 3 % penalty and up to 90 days with 5 % penalty on prior written request.

2.2 For Balance Payment of 65%

Plan-A

A sum of Rs.33,96,250/- (Thirty three lakhs ninety six thousand two hundred fifty only) being

⁴ LOI

balance 65% of tentative price of apartment within 60 days of the issue of LOI with a rebate of 5% on the balance amount payable.

Plan-B

A sum of Rs. 35,75,000 (Thirty five lakhs seventy five thousand only) being balance 65% of the tentative price can be paid with 12% interest in 6 half yearly instalments from the date of issue of LOI, Payment schedule mentioned as under:-

2.3 For Balance Payment of 5%

(i) The balance amount of Rs.275000/- (Two lakhs seventy five thousand Only) being 5% of the tentative price of apartment shall be payable at the time of possession.

(ii) Delays in payment of instalments shall result in cancellation of the allotment. However, on request establishing genuine grounds, delays up to 12 months can be condoned by the Estate Officer, by charging 18% interest for the period of delay. Delays beyond 12 months shall not be condoned under any circumstances and shall result in cancellation of allotment and refund of the amounts paid, after forfeiture of 10% of the amount. Possession shall not be handed over till all dues are cleared.

(iii) In case of fully paid apartments, the enhancement in price (due to the reasons laid down in para 1(ii), shall have to be paid within 90 days of such demand without payment of any interest or in 6 Half Yearly instalments along with interest @ 12 per annum. In other cases the enhancement shall be built into balance instalments.

(iv) All payments shall be made by a bank draft drawn in favour of Estate Officer GMADA...

OWNERSHIP AND POSSESSION

- (I) Allotments shall be on free hold basis.
- (II) Possession of apartment shall be handed over after completion of development works at site in a period of 36 months from the date of issuance of Letter of Intent. In case for any reason, the Authority is unable to deliver the

possession of apartments within stipulated period, allottee shall have the right to withdraw from the scheme by moving an application to the Estate Officer, in which case, the Authority shall refund the entire amount deposited by the applicant along with 8 % interest compounded annually. Apart from this, there shall be no other liability of the Authority.

- (III) The ownership and possession of apartments shall continue to vest with Greater Mohali Area Development Authority until full payment is made of outstanding dues in respect of said apartment.
- (IV) The allottee shall be required to execute a Deed of Conveyance in prescribed format and manner within 90 days of payment of entire money. The expenses of registration and execution of Conveyance Deed shall be borne by the allottee.
- (V) There shall be bar on sale of the apartment till 2 years after handing over of possession or 5 years from date of issuance of LOI whichever is earlier.
- (VI) The floor of the apartment shall be allocated through draw of lots.”

3.3 The scheduled date of delivery of possession was 21st May, 2015. It has been alleged that on his visit to the development site in May, 2015, the respondent found no development commensurate to the time that had passed. Since it did not appear likely that possession of the flat would be delivered to the respective owners for another 2-3 years, he resolved to opt out of the scheme.

3.4 He approached the concerned official in this regard, who apparently informed him that if he chooses to pursue this route, GMADA would pay him the deposited amount,

along with 8% interest thereon, from 21st May, 2015, till the date of payment.

3.5 Given that no relevant document stipulated such a condition, the respondents filed a consumer complaint (CC No.197 of 2016), which was withdrawn due to certain technical reasons. Shortly after, GMADA issued a letter of allotment-cum-offer of possession dated 29th June, 2016, stating that the 'numbering draw' was held on 5th January, 2016 and he had been allotted 'Apartment No.902, Tower No.7, Block C, Floor 8, Type 2'.

3.6 Upon visiting the allotted flat, of which he has allegedly been in possession as of now, he found that various changes were made to the project itself, as also in the facilities and amenities provided therein, unilaterally.

4. It is in the aforesaid backdrop that the complaint, the subject matter of these appeals, came to be filed.

5. The State Commission's findings can be summarized *inter alia* as under :

a) There is no substance to the allegation that the facilities to be provided by GMADA have not been provided. There are no photographs to substantiate this, nor is there any report issued by a competent person to prove the absence of these facilities in the project.

b) The presence of an arbitration clause would not bar the jurisdiction of the State Commission, in view of the findings of this Court in *National Seeds Corporation Ltd. v. M. Madhusudan Reddy*⁵.

c) GMADA cannot stop the respondents from seeking a refund of their money because it was concluded that there is no proof on record that the authority completed the project within the stipulated time. Such desire to seek a refund is also not without precedent as GMADA had already extended this facility to another allottee.

d) It is an undisputed position that the respondents had paid a substantial amount of consideration towards the flats they were to receive and only a small portion of the total consideration remained to be paid.

e) The respondents were entitled to withdraw from the scheme. GMADA cannot be accorded any benefit on the ground that they had offered possession to the respondents on 29th June, 2016, which is more than a year after the stipulated date of completion.

6. Having come to the conclusions as above, the State Commission passed the following order:

“17. In view of the above discuss, the Consumer Complaint No.438 of 2017 is accepted and the opposite party is directed to refund the entire deposited amount of Rs.50,46,250/- to the complainant along with interest at the rate of 8%, compounded annually under Clause 3(II)

⁵ (2012) 2 SCC 505

of the Letter of Intent, Ex. C-2. The opposite party shall also pay a compensation of Rs.60,000/- to the complainant for mental tension and harassment suffered by him and Rs.30,000/-, as costs of litigation. The opposite party shall also pay the interest paid by the complainant to State Bank of India on the loan taken from it and paid to the opposite party for the purchase of the flat, as charged by the Bank from the complainant.

18. In view of reasons and discussion held in Consumer Complaint No.438 of 2017, the Consumer Complaint No.439 of 2017 accepted and the opposite party is directed to refund the entire deposited amount of Rs.41,29,619/- to the complainant, along with interest at the rate of 8%, compounded annually under Clause 3(II) of the Letter of Intent, Ex. C-2. The opposite party shall also pay a compensation of Rs.60,000/- to the complainant for the mental tension and harassment suffered by him and Rs.30,000/- as costs of litigation. The opposite party shall also pay the interest paid by the complainant to State Bank of Hyderabad and State Bank of India on the loan taken from it and paid to the opposite party for the purchase of the flat as charged by the Bank from the complainant.”

(Emphasis supplied)

7. GMADA carried the matter in appeals to NCDRC. In the impugned order, reference is made to ***Greater Mahali Area Development Authority v. Priyanka Naiyyar***⁶, which was also referred to by the State Commission, where the Commission had granted compensation of ₹2 lakhs to the complainant in addition to the 8% interest, which was to be given on account of the fact that the interest charged by the bank in the case was @ 10.75%. It was concluded that there was no merit in the appeals which were dismissed on the grounds of delay and merit, along with

⁶ 1st appeal No. 1456 of 2016

costs quantified at ₹20,000/- each to be paid to both the respondents herein.

8. Aggrieved by this order, GMADA is before us. Notice was issued on 8th November, 2019 limited to that part of the order by which interest has been awarded on the loan taken by the respondent-Anupam Garg from the State Bank of India in addition to the 8% compounded interest already granted.

9. We have heard the learned counsel for the parties.

10. The appellants' case is that casting liability for the respondents' loan upon GMADA is not a position under law. In contrast, the respondents argue to the contrary, stating that the Commissions have the requisite authority to grant compensation over and above what is agreed in the contract. It is their case that the terms of the agreement cannot circumscribe the authority of the Commission to award just compensation.

11. In ***Bangalore Development Authority v. Syndicate Bank***⁷, this Court having surveyed several other judgments, laid down seven principles regarding grant/non-grant of relief to an allottee who is aggrieved by non-delivery or delay in delivery of plots/flats. This case is covered by the first one, which is as follows :

“(a) Where the development authority having received the full price, does not deliver possession of the allotted plot/flat/house within the time stipulated or within a reasonable time, or where the allotment is cancelled or

⁷ (2007) 6 SCC 711

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.”

12. The observations made in ***GDA v. Balbir Singh***⁸ are also important when it comes to the determination of compensation.

It was held as under :

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

9. That compensation cannot be uniform and can best 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. But in cases where monies are being simply returned then the party is suffering a loss inasmuch as he had deposited the

⁸ (2004) 5 SCC 65

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

13. The entitlement of compensation, therefore, is not in dispute. A reference to ***Balbir Singh*** (supra) shows that compensation can take different forms, considering the facts and circumstances at hand. Determination has to be made, keeping in view the stage of the work completed, where the service provider has lapsed in duty and the loss caused thereby etc.

Uniformity is foreign to such determination. Here only we may observe that the State Commission, as well as NCDRC's reliance on *Priyanka Nayyar* (supra) is misplaced. In that case, ₹ 2 lakhs was given as compensation, taking into account that the complainant had suffered interest in the loan taken at the rate of 10.75%. It was not given as payment for the interest itself. By placing reliance on this order, against which one special leave petition indeed stands dismissed, what was open for the commission to do was to, in the attending facts and circumstances, compute an amount as compensation, in which one of the factors would be that in order to secure a property in the scheme floated by the GMADA, the respondents had taken out a loan and would be liable to pay interest thereon. However, this order does not permit the interest on the loan, in its entirety, to be saddled by the authority responsible for the housing scheme and the delay, which is the genesis of the dispute.

14. We are supported in this view by the findings made by a coordinate Bench of this Court in *DLF Homes Panchkula (P) Ltd. v. D.S. Dhanda*⁹, which is extracted as under :

“15. The District Forum under the Consumer Protection Act, 1986 (“the 1986 Act”) is empowered inter alia to order the opposite party to pay such amount as may be awarded as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party including to grant punitive damages. But the forums under the Act cannot award interest and/or compensation by applying rule of thumb.

⁹ (2020) 16 SCC 318

The order to grant interest at the maximum of rate of interest charged by nationalised bank for advancing home loan is arbitrary and has no nexus with the default committed. The appellant has agreed to deliver constructed flats. For delay in handing over possession, the consumer is entitled to the consequences agreed at the time of executing buyer's agreement. There cannot be multiple heads to grant of damages and interest when the parties have agreed for payment of damages @ Rs 10 per square foot per month. Once the parties agreed for a particular consequence of delay in handing over of possession then, there have to be exceptional and strong reasons for Scdrc/Ncdrc to award compensation at more than the agreed rate."

(Emphasis supplied)

15. A perusal of the judgment and orders of the Commissions does not reveal any exceptional or strong reasons for the interest on the loan taken by the respondents to be paid by GMADA. That apart, whether the buyers of the flat do so by utilizing their savings, taking a loan for such purpose or securing the required finances by any other permissible means, is not a consideration that the developer of the project is required to keep in mind. For, so far as they are concerned, such a consideration is irrelevant. The one who is buying a flat is a consumer, and the one who is building it is a service provider. That is the only relationship between the parties. If there is a deficiency or delay in service, the consumer is entitled to be compensated for the same. Repayment of the entire principal amount along with 8% interest thereon, as stipulated in the contract, alongside the clarification that there shall be no other liability on the authority, sufficiently meets this requirement.

16. In ***DLF Homes Panchkula (P) Ltd.*** (supra), it was also observed as follows:

“17. This Court in a judgment reported as *Irrigation Department, State of Orissa v. G.C. Roy* [*Irrigation Department, State of Orissa v. G.C. Roy*, (1992) 1 SCC 508] examined the question as to whether an arbitrator has the power to award interest pendente lite. It was held that a person deprived of use of money to which he is legitimately entitled has a right to be compensated for the deprivation which may be called interest, compensation or damages. Thus, keeping in view the said principle laid down in the aforesaid judgment, the amount of the interest is the compensation to the beneficiary deprived of the use of the investment made by the complainant. Therefore, such interest will take into its ambit, the consequences of delay in not handing over his possession. In fact, we find that the learned Scdrc as well as Ncdrc has awarded compensation under different heads on account of singular default of not handing over possession. Such award under various heads in respect of the same default is not sustainable.”

(Emphasis supplied)

17. What flows from the above is that the amount of interest awarded is the compensation to the investment maker for the amount of money and the time he has been denied the fruits of that investment. The 8% interest awarded in this case on top of the entire amount that is being invested, is the compensation for being deprived of the investment of that money. Apart from this no amount of interest on the loan taken by the respondents could have been awarded.

18. We clarify that we have in no way held that the Commission is not empowered to give compensation, generally.

For that reason, we do not interfere with the award of certain amounts on account of mental agony and litigation costs. We have only interfered with that part of the order as set out in the notice. It has come on record that the amount deposited before the State Commission does not include the amount of interest on the loan. In view of the above discussion, we hold that there is no requirement for GMADA to make any further deposit. The amount as it stands currently, be dispersed to the respondents.

19. The appeals are allowed. Pending applications, if any, shall stand disposed of.

.....**J.**
(Sanjay Karol)

.....**J.**
(Prasanna B. Varale)

4th June, 2025;
New Delhi.