CHAPTER I
Housing Sector in India

Introduction

Housing is one of the prime necessities of life, next only to food and clothing. Housing is high in our list of priorities. In fact, housing is not only an important basic human need but also a fundamental right of the poor too. Though this is a basic need of all the landless agricultural workers, scheduled castes and scheduled tribes, villages artisans and other economically weaker sections, they are severely handicapped in having a shelter at affordable cost. Thus, housing is considered no doubt, as one of the necessities of any society. However, we find that the shortage of habitable dwelling places is a worldwide phenomena.1

WHO expert committee on the public health aspects of housing has defined housing as "the physical structure that man used for shelter and the environs of that structure including all necessary services, facilities, equipment and devices needed or desired for the physical and mental health and social well-being of the family and individual"2. Acute shortage of shelter, particularly in the developing countries, is indeed

the most conspicuous fact of housing. However, housing has much wider significance than providing one of the basic necessities.3

Housing has an essential place in the cumulative development process. Adequate shelter is essential for human dignity. The home provides the physical frame work in which the human, social, economic and cultural resources of the individual are released, enriched and integrated.4 The cardinal principles of the country's planning have always the provision for the basic needs to all citizens, optimum utilization of resources and attainment of self-reliance on socio-economic and technology fronts. Housing being one of the basic needs, thus assumes priority.5

Housing is often considered the key to overall economic and social development. A 'house' is the end product of a variety of complex operations and an assembly of numerous materials. So it opens up possibilities for reducing costs in a number of ways. The application of technological development in the building process singularly has the most far reaching effects in cutting costs and in achieving quick results.6

Statistical analysis indicate that the annual growth rate of the poor in developing countries has been almost three times in contrast to the developed ones. Among the three basic requirements of man, namely food clothing and shelter, shelter has became the most arduous task for an individual.  

According to the survey of the United Nations Centre for Human Settlements (UNCHS), there are currently more than one billion people who are either without shelter or live under hopelessly squalid and unhealthy conditions. More than one hundred million people, who have no home at all, sleep in the street pavements under the bridges and door ways. The survey also reports that an estimated 350 million people have migrated to the cities during the last ten years. This has been one of the reasons of the housing problem in the urban and semi-urban areas.

Shelter ranks next to food and clothing as a basic human need. The provision of sheltering is closely linked with the improvement of overall quality of life, because it not only fulfills the need of housing but also creates congenial conditions for the achievement of some important goals of development such as improvement of health, sanitation, education.

and so on; further housing activity creates additional employment opportunities and also induces voluntary savings.\textsuperscript{10}

A poor man in the village would never be able to assert his rights unless his possession over home is secure. Thus housing has become a part of the struggle for economic emancipation. It is also essential for a man to live in peace and dignity. Housing is a universal problem now-a-days in all countries several studies reveal that the present rate of supply and demand for houses and the housing deficiencies in developed as well as developing countries are bound to be a chronic problem.\textsuperscript{11}

House is not just a roof over four walls—it is an extension of human personality as Nehru called it. It is an abode where basic human interactions take place, where children grow and acquire the concepts of morality and decent citizenship. The social quality of life is reflected to a large extent in the state of its housing.\textsuperscript{12}

\textsuperscript{10} Udaya Bhaskara Reddy, The dimensions of rural housing in India, \textit{Kurukshetra}, June, 1988, p.18.

\textsuperscript{11} Narayana, N. Ramanjaneyulu, M, Rural housing in India, \textit{Yojana}, December 16-31, 1988, p.17.

\textsuperscript{12} Biswanth Ghosh, Housing for the rural poor a knotty problem, \textit{Yojana}, November 16-30, 1989, p.17.
Importance of Housing

Proper housing exercises a profound influence on peoples health and is recognised as an important indication of level of living. It is a matter of utmost importance in the social welfare programmes of all States.\(^{13}\)

An important reason for the neglect of housing was that it was viewed as subordinate requirement in the estimates of international economists and among economists within the countries themselves.\(^{14}\)

The Planning Commission observed in the First Five Year Plan "In fulfilling the basic needs of the population, housing ranks next to food and clothing in importance.\(^{15}\) A certain minimum standard of housing is essential for healthy and civilized existence. The development of housing therefore, must enjoy high priority in a society such as ours where housing amenities are far below the minimum standards that have internationally accepted.\(^{16}\) Housing makes significant contribution to national income. The contribution

\(^{13}\) Ramanjaneyulu N., and Narayana, \textit{Op.-cit.}, p.17.

\(^{14}\) Narayana Nair, E., \textit{Op.-cit.}, p.375.

\(^{15}\) Francis Cherunilan, \textit{This Growing Shortage of housing, Yojana}, October 1-15, 1989, p.15.

\(^{16}\) \textit{Lok.-cit.}
of housing to gross domestic product (GDP) at factor of cost increased from Rs.1357 crores in 1970-71 to Rs.3562 crores in 1980-81 at current prices.17

The role of housing development in overall development is substantial. On one hand shelter is basic human need and creation of mechanisms for provisions of housing to its citizens is a major obligation of the welfare state. On the other hand housing is an industry in its own right and as the largest part of the construction activity sector having the second largest employment potential.18

**Housing deficit**

In addition to poverty in rural areas, the frequent occurrence of floods, fire and break-down of joint family system has further aggravated the problems of housing shortage in rural areas. Like mass poverty, scarcity of housing has proved to be an intractable problem and remained an abiding feature of Indian reality plan after plan. The problem of deprivation is directly connected with the lack of shelter and acute poverty.

17. Lok-cit.

Table 1.1
Growth of housing problem in rural India 1901-1981

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Year</th>
<th>Total No. of Households</th>
<th>Total No. of census houses</th>
<th>Surplus or deficit (col 4-3)</th>
<th>Percentage of surplus or deficit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>1901</td>
<td>482</td>
<td>502</td>
<td>+ 20</td>
<td>+ 4.56</td>
</tr>
<tr>
<td>2.</td>
<td>1911</td>
<td>519</td>
<td>578</td>
<td>+ 59</td>
<td>+ 11.36</td>
</tr>
<tr>
<td>3.</td>
<td>1921</td>
<td>521</td>
<td>584</td>
<td>+ 63</td>
<td>+ 10.78</td>
</tr>
<tr>
<td>4.</td>
<td>1931</td>
<td>571</td>
<td>631</td>
<td>+ 60</td>
<td>+ 10.57</td>
</tr>
<tr>
<td>5.</td>
<td>1941</td>
<td>620</td>
<td>664</td>
<td>+ 44</td>
<td>+ 7.97</td>
</tr>
<tr>
<td>6.</td>
<td>1951</td>
<td>536</td>
<td>541</td>
<td>+ 5</td>
<td>+ 0.93</td>
</tr>
<tr>
<td>7.</td>
<td>1961</td>
<td>690</td>
<td>651</td>
<td>- 39</td>
<td>5.65</td>
</tr>
<tr>
<td>8.</td>
<td>1971</td>
<td>795</td>
<td>727</td>
<td>- 68</td>
<td>8.66</td>
</tr>
<tr>
<td>9.</td>
<td>1981</td>
<td>908</td>
<td>861</td>
<td>- 47</td>
<td>- 5.17</td>
</tr>
</tbody>
</table>

Source: Computed from census data 1901-1981, Census of India.

The state of housing situation in rural areas is revealed in Table 1.1. In the year 1901 when there were 482 lakh rural households there were 502 lakh houses. Thus, there were 20 lakh surplus houses. This situation continued till 1951 (see Table 1.1) but the situation reversed since then in 1961 when there were 690 lakh households there were only 651 lakh census houses leaving the housing deficit to the tune of 39 lakh units. This housing deficit had grown to 68 lakh units in 1971 and 47 lakh units in 1981 (see Table 1.1)
Shortage in Rural Housing in India

The bulk of houseless population pertains to the economically weaker sections as well as socially exploited groups like the scheduled castes and scheduled tribes. The increase of population in rural areas is far greater than that of urban areas. The shortage of housing is also related with the increase of population. Housing activity serves fulfill many of the fundamental objectives of the plan.

Table 1.2

Shortage of houses in India

(Figures in Millions)

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Year</th>
<th>Rural</th>
<th>Urban</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>1961</td>
<td>6.6</td>
<td>3.6</td>
<td>10.2</td>
</tr>
<tr>
<td>2.</td>
<td>1972</td>
<td>11.9</td>
<td>3.1</td>
<td>14.7</td>
</tr>
<tr>
<td>3.</td>
<td>1981</td>
<td>15.9</td>
<td>5.4</td>
<td>21.3</td>
</tr>
<tr>
<td>4.</td>
<td>1985-90</td>
<td>18.8</td>
<td>5.9</td>
<td>24.7</td>
</tr>
</tbody>
</table>


The shortage of housing can affect the production of a nation. The extent of shortage of houses has been shown in the table 1.2. The shortage of housing is a global problem.
and even developed countries are not able to tackle it fully. Over the years of development the formal construction approach has had only limited effect on the housing problem of the poor.\textsuperscript{19} We find that the shortage of habitable dwelling places is a world wide phenomenon. This problem is relatively more acute in the developing countries where urbanization, land use diversification and political revolution all take place simultaneously.\textsuperscript{20}

The housing sector's susceptibility to distortions is well-known. More often, these distortions are reflected in various policy interventions of the state in the form of laws and regulations, which end up causing more problems than they can ever be expected to solve.

Housing activity is largely viewed as a consumption activity and its capacity to generate surplus and repayment stream is not adequately recognised. The housing shortage in India is estimated at 31 million and is expected to go up to about 41 million by the turn of the century (Table 1.3).


Table 1.3

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Year 1991</th>
<th></th>
<th>Year 2001</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Rural</td>
<td>Urban</td>
<td>Total</td>
<td>Rural</td>
</tr>
<tr>
<td>Households</td>
<td>113.5</td>
<td>47.1</td>
<td>160.6</td>
<td>137.0</td>
</tr>
<tr>
<td>Usable household stock</td>
<td>92.9</td>
<td>36.7</td>
<td>129.6</td>
<td>115.5</td>
</tr>
<tr>
<td>Housing shortage</td>
<td>20.6</td>
<td>10.4</td>
<td>31.0</td>
<td>25.5</td>
</tr>
</tbody>
</table>

(12.2) (9.6) 30.8 (26.5) (14.3) (40.8)

Source: The Hand Book of Housing Statistics, part 1 1990-NBO (Figures in bracket recomputed on the basis of 1991 census/projected population)

75 per cent of the shortage in rural areas characterised by low level economic activities and lack of adequate institutional presence. Since many of the urban problems are related with the fast rate of urbanization, we can assume that as long as the rate of urbanization is greater than the rate of increase in the urban facilities and greater services to satisfy the existing natural population growth, the urban problems will continue.

social problems may worsen as the rate of migration increases, for the capacity of the urban institutions to provide basic facilities and services to the increasing population become inefficient. The present rate of construction by Government programmes is insignificant in relation to the dimensions of the housing problems. The housing problem in India is not due to the lack of any policy propagation but due to the lack of realism in the strategies and policies.

The country at present is facing a colossal housing shortage. The estimated housing shortage of about 21.3 million dwelling units have been assessed by the National Building Organisation on the basis of 1981 censes data in urban and rural sectors. One of the important contribution of housing is the generation of employment. This is of particular importance to a country like India where unemployment is a very serious problem.

The cooperative housing movement in this country is facing today a very critical situation and is likely to stagnate.

23. Ibid., p.377.
24. Ibid., p.381.
25. Dinesh Chand, op. cit., p.11.
26. Francis Cherunilam, op. cit., p.16.
if no immediate steps are taken to assist it by solving its difficulties. The housing situation in India, indeed is very depressing in India more than two thirds of the population do not have a permanent roof over their head. The gravity of the acuteness of housing situation is reflected in the dangerous overcrowding in one room tenaments in almost all big cities. The problem of providing suitable housing accommodation is being confronted all over the country.

According to 1961 censes there were 79.2 million dwelling units in the country. It rose to 92.9 million in 1971 and 111.63 million in 1981. The National Building Organisation in 1985 estimated the housing stock as 124.9 million units, the housing shortage in the country is estimated now to be 25.6 million units on the basis that each house hold have a pucca or semi pucca house - to live in the urban areas and 9 pucca semi-pucca or serviceable kutch house in rural areas.

On the basis of 1981 censes the estimate of the National Building Organisation revealed that housing shortage in the rural areas was of the order of 18.8 million in 1985.

27. Cooperative Housing in India, op. cit., P. 160.
29. Lok. cit.
It is estimated that 57 million houses have to be built in rural areas by 2000 A.D., if there is to be no shortage.

According to a N.B.O. estimate again the total shortage of houses in the country in 1981, was of the order of 23.3 million units. This shortage is projected to have increased to around 31 million by now and would be 41 million by 2001. Even if it is built at a cost of Rs.10,000 per unit, an investment of about Rs.57,000 crores would be required.

This problem can be tackled only when we have a futuristic approach of planning in terms of the viable growth of habitat centres, develop modules of land use plan, optimise utilisation of building material resources and adopt new technologies being developed. Unless these efforts are combined and put together in motion, the chronic problem of housing shortage will never ease.

Out of the country's total population of about 84.4 crore, about one-fourth live in urban areas and the remaining


three-fourth in rural areas. A rough estimate indicates a shortage of around 5 crore units. Apart from the shortage in organised sector, nearly 20 per cent of the urban population in overall live in the so called 'slums'. This is more acute in industrial and metropolitan cities.

Since the beginning of the industrial age the demographic trend has been more towards urbanisation in India, today, the urban population constitutes 23.7 per cent of the total population as against 11 per cent in 1901. In fact the rate of migration amounts to mass shift of population of 4 million annually a growing and colossal trend. Migration is not only a problem but also there is a natural increase in the population of urban areas. All this has resulted in a high demand for low cost housing units as an ever widening gap between supply. The problem has also further been heightened by wrong policies. Want of clarity in concepts, lack of economic designs and architecture, non-availability of appropriate technology coupled with that of the building material, inadequacy of finance etc.

Housing problem should also be accompanied by providing them the basic amenities such as secure land tenures

32. Singh, D.N., op. cit, p.4.
34. Vashist, P.D., Role of Science and Technology in Shelter for all, Kurukshetra, June 1988, p.12.
and other essential services like safe drinking water, sanitation, roads, street lights, transport, primary health and education, etc.\textsuperscript{35} The problem of housing has assumed very serious dimensions in both rural and urban areas in the form of acute shortage, deteriorating quality and lack of basic amenities.\textsuperscript{36} According to the National Commission on urbanisation as many as 45 per cent in urban areas are living in just single room houses, nearly 5 persons to a room in a state of extreme overcrowding.\textsuperscript{37}

Water supply is another problem highlighted in the recent drought. Hand pumps have been installed at wrong places resulting in grave health hazard.\textsuperscript{38} Housing problem is really acute in urban areas and there is no real housing problem in the villages. But in the rural areas poor people usually live in Kutcha sheds which can hardly be called houses in the true sense.\textsuperscript{39}

\begin{flushleft}
\textsuperscript{35} Lok, cit. \\
\textsuperscript{36} Udaya Bhaskara Reddy, The Dimensions of Rural Housing in India, \textit{Kurukshetra}, June 1988, p.18. \\
\textsuperscript{38} Dinesh Mohan, Sciences and Technology in Rural Housing and Environment, \textit{Kurukshetra}, October 1988, p.55. \\
\textsuperscript{39} Sarkar, D.C., Houses for all in Rural areas, \textit{Kurukshetra}, August 1987, p.11. 
\end{flushleft}
GOVERNMENT EFFORTS

The role of the Government and Research, Development and extension agencies in housing development leading to the construction and provision of affordable house to the people has been briefly described here.

The Government

Although the Government is not an agency but the need for urgent action to improve the quality of life in rural and urban settlements, especially of the poorest segments of the population is a primary responsibility. Government's role in relation to housing is complex and varied. It acts as the legislative authority and makes budgetary provisions for housing. The Government has no doubt been trying to make direct addition to the housing stock through the various housing schemes designed to benefit the disadvantaged sections of the people. The Ministry of Urban Development is implementing four social housing schemes through the state governments and union territories administration. The schemes are housing schemes for the economically weaker sections of the society, those for low income group, middle income group and rental housing scheme. The scheme for provision of rural house-sites and construction assistance is also being implemented by the state governments. The Ministry of Rural Development is implementing Indira Awas
Yojna and two other important schemes namely the National Rural Employment Programme and the Rural Landless Employment Guarantee Programme under which construction of houses as fixed capital formation forms an element.

The announcement of the National Housing Policy by the Government and formation of the National Housing Bank may be considered as an important landmarks in the history of housing in the country. The housing policy clearly recognises housing as a productive investment besides being a consumption good. Shelter is viewed as a means for raising the quality of life of the people. The Policy accords priority to certain disadvantaged sections of people such as houseless persons scheduled castes/ scheduled tribes, freed bonded labour, rural landless labour including artisans, widows, single women, handicapped, etc. Investment of all the concerned agencies in housing activity with Government playing the role of facilitator and creating the atmosphere conducive to house construction is implied in the policy. The strategies for achieving the objectives of the National Housing Policy include, supply of standardised building materials at reasonable prices, promoting research in building materials, improving and upgrading construction skills etc., as well as providing necessary institutional support.
Research, Development and Extension Agencies

Rapid economic growth and social developments are imposing growing demands on the capacity and efficiency of the house building industry. In the building industry innovative technologies have speeded building construction activities, particularly in the production of building materials and in building operations. In recent years the housing development agencies have developed technologies consistent with our economic and social development. These agencies keep in view the following general guidelines for research and development of appropriate technologies for housing development:

Making the maximum use of local resources both human and material, thus generating local control and initiative.
Expand the use of local skills and improve on existing methods.
Rely as little as possible on foreign skills and input;
Encourage incorporation of the informal sector into the formal sector and thus have a base on skills that are initially easy to acquire;
Minimise the use of sophisticated imported technologies and minimise waste of resources;
Be flexible enough to encompass as wide a sector of the population as possible;
Be capable of expansion and growth within the formal and the informal sectors;
Be capable of accepting production fluctuations without disastrous economic results;
Be capable of providing more employment opportunities to local population;
Upgrading of traditional technologies and materials;
Choice of appropriate technology based on cheap, adaptable easily assembled building materials developed from locally available raw materials;
Utilisation of agricultural and industrial wastes in house building construction.

Public and semi-public housing development agencies are endeavouring for development of appropriate technologies and the use of indigenous raw materials and labour intensive methods in the construction of dwelling units. Activities of some housing development agencies are given below in brief.

Central Building Research Institute

Central Building Research Institute (CBRI), Roorkee a constituent establishment of the Council of Scientific and Industrial Research is engaged in applied research and development works in diverse fields related to building science. This
premier national laboratory is assisting the building construction and building material industries in finding timely, appropriate and economical solutions to the problems of planning foundation, building materials, rural and urban housing, energy conservation, functional efficiency and of fire in buildings. The institute arranges seminars, exhibitions, demonstrations, conducts training on technologies and renders information service to public enquiries relating to housing and building development. The transfer of technology pertaining to housing development is being effected through six extension and liaison centres one each at Ahmedabad, Bhopal, Calcutta, Delhi, Hyderabad and Trivandrum.

The Institute is generating, cultivating and promoting building science and technology in the service of the country. It has developed techniques/solutions for mass building programmes of housing, economical space standards for dwellings, more durable mud and thatch houses, disposal of waste water and of the human excreta, cheap chimney for household kitchen, use of scarce materials, upgrading traditional materials and technologies effective utilisation of agro-industrial and mining wastes, production of good quality bricks from the treacherous black cotton soil, utilisation of flyash, simple and economical foundations for different geotechnical situations, production of corrugated roofing sheets from wood, wool or coir fibre with cement as binder etc.
National Buildings Organisation

National Buildings Organisation (NBO) is an attached office of the Ministry of Urban Development. It aims at achieving reduction in housing construction costs through the promotion and co-ordination of research in building materials, techniques and designs. It disseminates information on the application of building technology and results of research in practices. It is engaged in co-ordination and promotion of building research and bringing about speedier application of results with the objectives of making them readily acceptable to the construction departments and housing industry. The emphasis is on inter-disciplinary approach and, therefore, studies in socio-economic aspects of housing and development of a sound base for housing statistics form an integral part of its activities.

For bringing about more effective application of building research in practice, the NBO administers the experimental housing scheme under which grants-in-aid is given to government departments, housing boards, research institutes and other bodies for undertaking experimental housing projects to propagate the use of new techniques and materials. The scheme serves to bridge the existing gap between the research institutions and the housing industry in the matter of utilisation of research results.
and technological developments. Under the scheme, large scale field application of new building materials and construction techniques is undertaken by adopting them in full-scale experimental housing works. Their performance and cost aspects are studied closely and an assessment is made of their suitability with reference to structural and functional worthiness and economy in consumption of materials. NBO suggests improvement in the production of traditional materials and introduces new materials in housing construction with the two fold purpose of reducing cost and alleviating shortage of traditional building materials.

NBO has been studying the problems of rural settlements and promoting demonstration, training and extension work as well as research in local technical problems through its regional housing development centres set up at 15 places throughout the country. For transferring the 'know-how' of the research laboratories to 'show-how' to the field, the centres put up clusters of demonstration low cost rural houses in selected villages in different states of the country. The houses are based on typical design concept for housing the rural poor evolved by the NBO. The environmental improvements, taken up along with construction of demonstration houses, have been inculcating a sense of clean and hygienic living amongst the villagers.
The Housing and Urban Development Corporation is an apex techno-financial public sector organisation of Government of India under the administrative control of the Ministry of Urban Development. The main objectives of HUDCO are to finance or undertake housing and urban development in the country, to undertake the setting up of satellite towns, to finance or undertake building material industries etc. HUDCO is the only financing institution which is looking to the technical aspects of the housing development including housing in the regional and urban context, area planning, physical and social infrastructure, layout and architectural standards, building materials, project management, conservation, social and economic aspects of housing, development of the weaker communities, supportive research and training of the personnel engaged in the housing sector.

HUDCO has regional offices in Ahmedabad, Bangalore, Calcutta, Madras, Chandigarh, Bombay and Guwahati for effective functioning. It has development offices in most states. It has also established a full fledged Human Settlement Management Institute for improving the perception of housing managers in regard to the complex issues of housing development.
Beginning with the financing of urban housing schemes of the State Government agencies, HUDCO has diversified its operations which now cover schemes for upgradation of squatter colonies on public lands, staff rental and hire purchase housing schemes of corporate employees, private builders housing scheme, building material manufacturing schemes, urban development schemes, commercial projects for providing community marketing facilities etc.

National Co-operative Housing Federation of India (NCHF)

The National Co-operative Housing Federation of India is a national level organisation of the entire co-operative housing movement in India and is working under the administrative control of the Ministry of Urban Development. All state level apex cooperative housing finance societies/federations are its members. NCHF is responsible for promoting an uniform development of the housing co-operatives in the country by way of providing guidance, advice and accelerating the activities of the state level co-operative housing finance societies and federations.

NCHF has taken a number of measures for the development of housing co-operatives in the country. While extending the academic support and other necessary help to its member federations
activising their financial, organisational and technical base, it is also helping housing co-operatives on legal, financial, organisational and technical matters. In addition, it is undertaking research studies, bringing out various publications, providing guidance on various aspects of housing and undertaking insurance business.

NCHF has also set-up a technical services organisation (TSO) which aims at providing various technical guidance to housing societies for implementing their projects effectively and efficiently. TSO helps the co-operative societies in:

1. Planning and design of co-operative housing projects;
2. Preparing estimates, detailed working drawings and specifications
3. Preparing structural, electrical, plumbing and drainage and landscaping plans and details;
4. Providing guidance in reducing the cost of construction by using low cost building materials and improved building techniques;
5. Preparing loan applications to be submitted to the financial institutions for raising loans etc.

Structural Engineering Research Centre (SERC)

The structural engineering research centre established at Roorkee and Madras, are national laboratories under the Council of Scientific and Industrial Research. SERC at Roorkee acts as an information bank of all the latest available knowledge and knowhow relating to the design and construction of high
rise buildings, underground structure and long span structures. It organises short term specialised courses in structural engineering with pronounced practical bias for the benefit of practising engineers to expose them to new advances and developments in design and construction. It also undertakes application oriented research on all aspects of structural engineering in consonance with the national priorities. Also undertake design consultancy and sponsored research.

SERC in Madras undertakes, inter alia, research in structural dynamics and machine foundations, concrete composites, concrete products design methods and construction techniques, pre-stressed concrete etc. It is also engaged on application oriented research and development in all areas of structural engineering. It provides design consultancy services. It also organises specialised short-term training course for practising engineers to expose them to advances and developments in design and construction methods.

NBO Regional Housing Development Centre (RHDC)

The Regional Housing Development Centre are located in different geo-climatic regions of the country at 15 centres i.e. Bangalore, Chandigarh, Howrah, Vellabhi Vidyannagar, Jodhpur, Varanasi, Ranchi, Srinagar, Trivandrum, Shimla, Madras, Guwahati, Bhopal, Bombay and Hyderabad. These centres have undertaken
research, training and extension activities in rural housing and village planning. They are playing a vital role because a number of schemes have been launched with a view to improving the housing conditions in the villages. Implementation of the schemes for the allotment of house sites and construction assistance for rural landless poor families, housing for the scheduled castes and scheduled tribes under NREP and RLEGP and Indira Awas Yojana have been taken up on country wide basis.

Based on the experience gained in putting up clusters each of 20 demonstration low cost houses alongwith items of environmental improvement taken up by NBO in selected villages in different geo-climatic regions of the country in collaboration with state governments, large scale housing programmes have been implemented in some states especially under NREP/RLEGP. Wide publicity to the work done by NBO and the housing development centres has been given through mass media and TV to motivate the rural people to build more durable houses at low cost, employing improved use of local materials and self-help.

**National Council for Cement and Building Materials (NCB)**

The National Council for Cement and Building Materials is attached to the Ministry of Industry with registered office at New Delhi its units are located at Ballabgarh, Hyderabad,
Patna, Madras and Tiruchi. It is engaged on, inter alia, research, technology development and transfer services on all aspects of cement and building materials which include lime and lime pozzolanas, refractories and ceramics, agricultural/industrial wastes-based building materials, gypsum based building materials, asbestos, glass and other fibre building materials, concrete and construction, structure etc.

National Test House (NTH)

The National Test House located at Calcutta and Madras are working under the Ministry of Commerce. The civil engineering section of NTH renders services through testing and evaluation of building materials like cement, concrete, flooring tiles, lime, bricks, flush door, timber glasses, refractories etc. It is also helping preparation of different Indian standards specifications in conjunction with Bureau of Indian Standard. Various building materials are included in regular testing schedule.

Indian Plywood Industries Research Institute

The Institute is a co-operative research institute financed by the Ministry of Industry. Its main functions are to design and develop glued plywood and glued laminated wooden structural and non-structural building components, prefabricated
houses and building using wood, plywood and other wood-based panel materials. Its other activity is to study improved fabrication techniques for using wood based panel materials in building and also to study structural synthetic resin adhesives. It also develops building materials and low cost houses from agricultural and wood residues. The Institute serves as an information and training centre for plywood particle board and allied industries.

Control and Research Laboratory, Bhubaneswar

It is a state level testing laboratory for testing of soil and other building materials. It undertakes both field investigation tests and laboratory experiments for foundations of buildings, and also building materials testing i.e. cement, aggregate, sand, bricks tiles, rocks, steel etc.

Building Centre Division, Madras

The Building Centre is working under Public Works Department of the Government of Tamil Nadu. It undertakes the tests on building materials, soil testing, method of new construction techniques, dissemination of information regarding building materials etc.

There is another institution at Madras named Concrete and Soil Research Laboratory working under the aegis of Public Works
Department, Government of Tamil Nadu. It is testing and conducting research on building materials such as cement, sand, lime, pozzolana, building stones, steel etc. It also undertakes studies on foundation problems, seepage etc.

Given the crucial importance of the house building industry to human settlements programmes, the housing development agencies need the most considered attention of governments over a long period and the perspective of their long term growth. The critical need is to ensure continuous and concentrated activity in the house building sector by advance preparation of physical plans for the important sections of the people. It is necessary to take steps to organise the housing industry on modern industrial lines in order to augment its capabilities to fulfil the objective of national economic and social development.

Research and Development efforts in the housing construction industry need to be stepped up by housing development agencies with a view to optimising the production and use of local materials and reducing costs of housing construction. A multi-disciplinary approach to research and development should be adopted not only to tackle the technological problems of housing construction but also to highlight the socio-economic dimensions of the housing sector. Special studies have to be
undertaken to enable choice of appropriate technologies in some of the important areas like development of local building materials, utilisation of agricultural and industrial wastes and low cost housing construction.

In India there is need to raise the productivity of labour without resort to the use of mechanised inputs to replace labour. The number of tools and equipments that have been developed for house building construction, have improved productivity of labour. With high employment, it would be more advantageous to focus on improvement of labour productivity than resorting to capital intensive technologies. Labour is cheap and abundant and employment of this unused resources is our concern. Manpower planning and management should receive careful attention in order to improve the technical skills of building labourers.

The Housing Policy: The National Housing Policy announced in May 1989 is a welcome step in this direction. The basic objectives are the following:

(i) to motivate and help people particularly the houseless to secure for themselves affordable shelter,

(ii) to promote investment in housing in order to achieve a sustained growth of the nations housing stock,
(iii) to create and develop an efficient and accessible system for the delivery of inputs to maximise housing efforts and

(iv) to improve the environment of human settlements with a view to raising the quality of life through the provision of drinking water, sanitation and other services.

The policy seeks to accord priority to promoting access to shelter for the houseless and the disadvantaged groups such as the scheduled castes and scheduled tribes, freed bonded labour, rural landless labour including artisans, widows, bonded labour, rural landless labour including artisans, widows, single women and women headed households, economically weaker sections, low income groups, victims of natural calamities etc.

The objectives of National Housing policy are sought to be achieved by:

(i) making available developed land at reasonable rates for housing,

(ii) providing security of tenure to house-holds,

(iii) developing a viable and accessible institutional system for provision of housing finance,

(iv) promoting savings and investment in housing by developing suitable saving instruments and providing appropriate fiscal incentives,
(v) creating an environment conductive to investment in housing for rental purpose;

(vi) promoting research and development of low cost and standardised low cost materials and components and appropriate technologies and designs,

(vii) making available standardised building material and components at reasonable prices,

(viii) encouraging production of building materials based on local resources and standardised low cost building materials and components,

(ix) improving and upgrading construction skills,

(x) giving impetus to co-operative and group housing activities as well institutionalising participation of non-governmental organisations,

(xi) modifying relevant laws and regulations wherever necessary with a view to removing constraints to housing activity,

(xii) creating and strengthening basic infrastructure and services needed for a healthy environment in human settlements and

(xiii) developing architecture relevant to the local life styles, keeping in view the traditional human settlements planning concepts and designs.

National Housing Policy (1987 Government of India) laid down emphasis on large scale investment in housing to mitigate the shortage of shelter. As a matter of fact the National Housing Bank (NHB) was set up to provide some relief
in the constrained housing finance system in this country.  

The Housing Policy of 1992 observed that the 1988 policy was approved by the Rajya Sabha and that there was a need to elaborate the contents of the 1988 document in the context of the formulation of the VIII Plan.

Essentially the 1992 document reflected the proposals of the 1988 policy. It underlined enabling role of the agencies and indicated that within the next ten years houselessness had to be reduced, more developed land and finance had to be supplied, upgradation of unserviceable houses had to be stepped up, minimum level of basic services had to be provided in order to ensure healthy environment and energy saving and cost effective materials and technologies had to be used. The fourteen elements shown as parts of the Housing Policy included all aspects directly and indirectly related to housing and also an 'Action Plan'.

The Action Plan began by pointing out that housing is a State subject and that they should be evolved at the local level with effective participation by the local bodies and citizens' groups. But more importantly the Action Plan

indicated that housing needs should be estimated in terms of number, types to be supplied by the private and public sector and those to be supplied to the housing rental market. It further suggested to estimate housing needs separately for the rural and urban areas and also on the basis of affordability. The Action Plans were proposed to be designed for implementation within one year periods (GOI 1992).

The current thoughts of the Government of India regarding housing policy recorded as "National Housing Policy" (May 1992) seem to recognize the magnitude of the housing needs in both the rural and urban areas and also reiterates that under the Indian Constitution, 'housing' is a State subject and that it better be so due to the "variations in housing needs and resource endowment in the country".

According to developmental economics an underdeveloped country should not invest too much in housing sector because the housing sector is less productive for immediate growth than the other sectors. But one cannot accept the above argument in its entirety because of two major reasons: (a) Investment in human resource development is measured in human capital to contribute to overall economic development and later housing facilities will contribute towards increased labour productivity.
(b) Housing constitutes a basic need of human beings and economic growth without provision of basic needs to the general mass of population makes little sense.  

The review of housing finance system of India suggested that the NHB should encourage mobilisation of household savings through Home Loan Account Scheme (HLAs) by massive campaign and advertisement.  

The investment on housing in the public sector has increased from Rs. 250 crores in the first Five year plan to Rs. 2458 crores in the seventh plan.

Housing demand has multiplied rapidly while supply has lagged. The housing gap is projected to be 41 million units by year 2000. Rise in inflation has resulted in higher prices of both materials and labour input in the building industry, and an even larger increase in the overall cost of construction. In 1991, the index of cost of construction had multiplied six times that of 1976. Though private investment has grown over various Plan periods, public investment

41. Lok. cit  
42. Ibid., p.20.  
in housing has not risen adequately. While for other building activities the rising costs do not make such a difference, for residential construction this has made the housing scarcity even more acute.

Table 1.3A
8th Plan Projections of Housing Requirements

<table>
<thead>
<tr>
<th>No. of Housing Units (in million)</th>
<th>Rural</th>
<th>Urban</th>
<th>Metro</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>I Upgradation</td>
<td>4.07</td>
<td>1.75</td>
<td>-</td>
<td>5.82</td>
</tr>
<tr>
<td>II New stock:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EWS</td>
<td>6.45</td>
<td>2.17</td>
<td>1.18</td>
<td>9.80</td>
</tr>
<tr>
<td>LIG</td>
<td>1.34</td>
<td>1.90</td>
<td>1.04</td>
<td>4.28</td>
</tr>
<tr>
<td>MIG</td>
<td>0.25</td>
<td>0.58</td>
<td>0.31</td>
<td>1.14</td>
</tr>
<tr>
<td>HIG</td>
<td>0.10</td>
<td>0.40</td>
<td>0.22</td>
<td>0.72</td>
</tr>
<tr>
<td>Total</td>
<td>8.15</td>
<td>5.05</td>
<td>2.75</td>
<td>15.95</td>
</tr>
<tr>
<td>I &amp; II Houseless</td>
<td>12.22</td>
<td>6.80</td>
<td>2.75</td>
<td>21.77</td>
</tr>
</tbody>
</table>


Thus, there is clearly the need to develop ways to speed up provision of more shelter. An assessment of the demand-supply gap across income groups shows that in rural, urban as well as metro areas, housing units for the economically
weaker sections (EWS) and low income groups (LIG) will be in short supply. Further, due to the high cost of construction, prices of the available housing stock will be high. The sections with higher purchasing power have better access so the poor will be the hardest hit by the spiralling costs of construction. Thus, the emerging need of the hour is not just of housing for the masses but shelter at an affordable cost.

Unfortunately, the concept of low cost housing has become synonymous with low quality housing. Further, it has been misinterpreted to imply housing for the poor. The idea of low or high relates more to conventional construction, where there is not much scope for cost cutting. Since materials formed the main part of construction costs, the only way to achieve low cost housing was through cheaper materials, which are often not of good quality.

But housing for the poor cannot and should not be viewed in isolation. Cost-reduction is important as a basic objective for the majority, because housing at affordable cost is the logical preference for all. In fact, even those with higher buying power would opt for it, provided the technology was able to cater to their need specifications.
Thus, what is needed is technology that is cost effective and economically viable for application on a wider scale. Cost effective technology involves identification of cost reducing elements in the construction process. It promotes economy in input use through power techniques, efficient planning and building design to optimise construction on limited space with use of newer, better and cheaper materials. These work towards reduction in overall cost of construction. If cost of construction is taken as 100, the weights usually given to various components would be as follows: Bricks: 16, sand: 9, cement: 19, timber: 9, steel: 23, labour: 25.

Thus, nearly 75 per cent of the total cost of construction is the cost of materials. Material costs are sought to be reduced through building techniques as well as housing designs which use lesser amounts of materials per sq. foot of construction. Further, since wages paid to labour cannot be controlled, cost reduction in the labour component can be achieved through technology which requires less time (therefore lesser number of man-days to be paid for) and also lesser human labour input. Wherever possible, materials which are less expensive but equally durable are also used.

But it is a combination of factors and not necessarily cheaper materials which bring economy. The idea is to use the same amount of inputs to build a larger house, or alternately,
to cut costs through lesser inputs for the same built-up area, without compromising on structural, functional and safety measures. This may be achieved through a cost efficient design of the house. For instance, use of prefabricated walls and roofing saves on labour costs though material cost is higher. When houses are being built for large numbers, specially in rural areas, a cost effective technology would advocate a combination of locally available and prefabricated materials.

But those involved in provision of housing for the masses feel that cost effective technology is still not developed enough to be applied on a large scale. The cases where it has been applied are location specific and isolated. This is perhaps the reason why it is yet to be adopted by Development Authorities and Housing Boards for large housing colonies. The requisite labour is not available and manufacture of cost effective inputs has not reached the required level. Such problems only reinforce the long standing need for construction to be viewed as a vital delivery system requiring comprehensive planning at the macro level. Construction is needed for development in all sectors of the economy and it generates the second largest employment after agriculture. Giving construction the formal status of an industry may help in this direction.
FINANCING

Financing of housing has been a subject of serious debate for quite sometime and is going on even now. With the shift in policy and emphasis the commitment of the state has been changing fast. The states earmark increasing outlays in their development plans for this sector with priority to weaker sections. The expenditure of the Government as reflected in the following data would show that investment under housing is steadily increasing over the years. It can be seen from Table 1.4.

Table 1.4
INVESTMENT OF HOUSING

<table>
<thead>
<tr>
<th>Year</th>
<th>Outlay on Housing and Urban Development (Rs. in crores)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1961-66</td>
<td>127.6</td>
</tr>
<tr>
<td>1966-69</td>
<td>73.3</td>
</tr>
<tr>
<td>1969-74</td>
<td>270.2</td>
</tr>
<tr>
<td>1974-79</td>
<td>1150.0</td>
</tr>
<tr>
<td>1979-80</td>
<td>368.8</td>
</tr>
<tr>
<td>1980-85</td>
<td>2488.4</td>
</tr>
<tr>
<td>1985-90</td>
<td>2874.0*</td>
</tr>
<tr>
<td>VIII Plan</td>
<td>7000.0 (estimated)</td>
</tr>
</tbody>
</table>

Notes: 1985-90 Outlay is only for housing sector.
During 1980-85 public sector plan expenditure on housing amounted to Rs.1839 crores. In addition public enterprises were estimated to have spent around Rs.275 crores on housing. Thus the expenditure on housing through public sector schemes amounted to Rs.2114 crores. The physical achievement during 1985-90 are given below.

The Housing and Urban Development Corporation (HUDCO) extended its operations during the Eight Plan to Rs.7000 crore for housing and infrastructure compared to Rs.2,874 crore in the Seventh Plan (see Table 1.4).

Loans at subsided rate of interest were extended for reconstruction of damaged houses to the Andhra Pradesh Government for flood affected districts and to Uttar Pradesh for earthquake affected areas.

Table 1.5

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Number of Houses</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Subsidised industrial Housing</td>
<td>72,260</td>
</tr>
<tr>
<td>2. Low-income Group housing</td>
<td>65,132</td>
</tr>
<tr>
<td>3. Middle income group housing</td>
<td>33,111</td>
</tr>
<tr>
<td>4. Village housing projects scheme</td>
<td>1,59,522</td>
</tr>
<tr>
<td>5. Rental housing</td>
<td>33,108</td>
</tr>
<tr>
<td>6. Rural housing</td>
<td>54,30,000</td>
</tr>
</tbody>
</table>

Source: Yojana, July 16-31, 1989 p.22
As regards rural housing and landless labour, 0.72 million families were left uncovered in 1980-81. Along with the allotment of house sites, the scheme provides assistance for construction and it is targetted to cover 2.71 million families at an estimated cost of around Rs.600 crores. It can be seen from table 1.6 that the states have made increasing commitment on social housing schemes.

Table 1.6
Seventh plan outlay on housing

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Schemes</th>
<th>Sixth plan outlays</th>
<th>Seventh plan outlays</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Rural house-site-house construction scheme (MNP)</td>
<td>353.50</td>
<td>576.90</td>
</tr>
<tr>
<td>2</td>
<td>Social departmental housing schemes</td>
<td>837.37</td>
<td>1,276.02</td>
</tr>
<tr>
<td>3</td>
<td>Police housing scheme</td>
<td>---</td>
<td>315.42</td>
</tr>
<tr>
<td></td>
<td><strong>Total states, Uts</strong></td>
<td><strong>1,190.87</strong></td>
<td><strong>2,178.34</strong></td>
</tr>
<tr>
<td></td>
<td><strong>B.C B. Central sector</strong></td>
<td><strong>300.00</strong></td>
<td><strong>289.87</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Grand Total</strong></td>
<td><strong>1,490.87</strong></td>
<td><strong>2,458.21</strong></td>
</tr>
</tbody>
</table>


Banking Sector & Housing Finance

In India public agencies are among the best known providers of affordable dwelling units. Their countrywide presence in the
urban areas make for a vast outreach. In fact, institution building in the housing sector has now assumed critical importance not only in the context of affordability but also for a better integration of the housing finance system with the macro structure.

The sectoral allocations have been largely determined through the planning mechanism over the successive five year plans. While the plan allocations were reduced from 34 per cent of the total outlay in the first five year plan (1951-56) to as low as nine per cent in the Seventh Plan (1985-90) (see Table 1.7).

Table 1.7
Public and Private Investment in Housing

<table>
<thead>
<tr>
<th>Plan period</th>
<th>Public (Rs. crores)</th>
<th>Private (Rs. crores)</th>
<th>Total (Rs. crores)</th>
<th>% of housing investment to total investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>2,500</td>
<td>9,000</td>
<td>11,500</td>
<td>34.0</td>
</tr>
<tr>
<td>2nd</td>
<td>3,000</td>
<td>10,000</td>
<td>13,000</td>
<td>19.0</td>
</tr>
<tr>
<td>3rd</td>
<td>4,250</td>
<td>11,250</td>
<td>15,500</td>
<td>5.0</td>
</tr>
<tr>
<td>4th</td>
<td>6,250</td>
<td>21,750</td>
<td>28,000</td>
<td>12.0</td>
</tr>
<tr>
<td>5th</td>
<td>7,960</td>
<td>36,400</td>
<td>44,360</td>
<td>9.3</td>
</tr>
<tr>
<td>6th</td>
<td>14,910</td>
<td>1,80,000</td>
<td>1,94,910</td>
<td>12.5</td>
</tr>
<tr>
<td>7th</td>
<td>24,580</td>
<td>2,90,000</td>
<td>3,14,580</td>
<td>9.0</td>
</tr>
</tbody>
</table>

Source: Prominent facts of Housing in India, NBO & UN Regional Housing centre for ESC AP, 1990.
The housing finance system in India has operated on the periphery of the larger financial system. Though banks have been lending to the housing sector, precious little has been achieved in terms of volume and nature of lending.

The allocation was later raised to Rs.1,000 million in 1981 and to Rs.1,500 million annually from 1984 to 1987. While the banks surpassed the target, as much as 88 per cent of their lending was required to disburse Rs.2,250 million and in 1989, Rs.3,000 million. The allocation now given to the banks is 1.5 per cent of their incremental deposit, which amounts to about Rs.4,000 million.45

**INSTITUTIONAL FINANCE**

The role of institutional finance assumes vital importance in this sphere. The establishment of National Bank for Housing Development is a laudable attempt. The major institutions involved in housing are Hudco, HDFC, LIC and consortium of nationalised banks.

**HUDCO**

Housing and Urban Development Corporation (HUDCO) an apex techno financial public sector organisation of government of India was established in the year 1970-71 mainly to finance

housing with prime focus on the economically weaker sections. An analysis of achievements reveal that HUDCO had assisted 5,770 projects involving a total loan assistance of Rs.3100 crores. The cumulative achievements by type of schemes is furnished in table 1.8 over the years of HUDCO’s involvement, a total of 30.3 lakh dwelling units could be assisted, of those about 22 lakhs were of economically weaker sections. The achievement under middle income groups, higher income groups and other sources given in table 1.9, the statewise distribution of loan is given in table 1.10.

Considering the massive shortage of housing, in rural areas, HUDCO started financing rural housing from the year 1977-78 for the rural landless to whom house sites have been allotted by state governments.

Table 1.8
HUDCO Loan sanctioned by type of schemes since inception to 1987-88.
(Rs. in crores)

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Type of Schemes</th>
<th>No. of schemes</th>
<th>Loan sanctioned</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Urban Housing scheme</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Commercial</td>
<td>3837</td>
<td>2097.06</td>
</tr>
<tr>
<td></td>
<td>Cooperative housing schemes</td>
<td>132</td>
<td>35.24</td>
</tr>
<tr>
<td>2.</td>
<td>Rural housing scheme cooperative</td>
<td>110</td>
<td>80.07</td>
</tr>
<tr>
<td></td>
<td>Others</td>
<td>869</td>
<td>351.89</td>
</tr>
<tr>
<td>3.</td>
<td>Land acquisition</td>
<td>66</td>
<td>106.42</td>
</tr>
</tbody>
</table>
4. Staff housing schemes 395 200.39
5. Slum upgradation 8 5.21
6. Basic sanitation 166 34.56
7. Utility and social infrastructure 129 71.46
8. Building material scheme 21 7.31
9. Package loan cooperative Others
   5 23.44
   4 11.30
10. World bank aided project
    1 31.46
11. Central Government employees
    scheme cooperative
    13 23.46
    Others
    14 21.62

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>5770</td>
<td>3100.89</td>
</tr>
</tbody>
</table>


Table 1.9
Category wise number dwelling units since inception to 1987-88

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>EWS</td>
<td>2237089</td>
</tr>
<tr>
<td>LIG</td>
<td>470515</td>
</tr>
<tr>
<td>MIG</td>
<td>240941</td>
</tr>
<tr>
<td>HIG</td>
<td>76644</td>
</tr>
<tr>
<td>Other</td>
<td>5173</td>
</tr>
</tbody>
</table>

| Total    | 3030362|

Table 1.10
Statewise distribution of loan by HUDCO

<table>
<thead>
<tr>
<th>State</th>
<th>Loan since inception</th>
<th>Sanctioned during 1987-88</th>
<th>Loan since inception</th>
<th>Disbursed during 1987-88</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uttar Pradesh</td>
<td>419.00</td>
<td>95.00</td>
<td>277.00</td>
<td>80.00</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>279.00</td>
<td>45.00</td>
<td>194.00</td>
<td>35.00</td>
</tr>
<tr>
<td>Kerala</td>
<td>214.00</td>
<td>44.50</td>
<td>132.00</td>
<td>20.00</td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>273.00</td>
<td>42.60</td>
<td>179.00</td>
<td>32.00</td>
</tr>
<tr>
<td>Gujarat</td>
<td>279.00</td>
<td>38.60</td>
<td>181.00</td>
<td>29.00</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>276.00</td>
<td>35.00</td>
<td>103.00</td>
<td>21.00</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>225.00</td>
<td>31.00</td>
<td>160.00</td>
<td>21.00</td>
</tr>
<tr>
<td>Other states and union territories</td>
<td>532.00</td>
<td>86.00</td>
<td>306.00</td>
<td>44.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2866.00</strong></td>
<td><strong>496.00</strong></td>
<td><strong>1809.00</strong></td>
<td><strong>325.00</strong></td>
</tr>
</tbody>
</table>

Source: *Yojana*, July 16-31, 1989, p.23

Against unit cost (excluding land cost) of Rs.6000 HUDCO provides 50 per cent loan assistance at 6 percent repayable in 11 years. If the unit cost excluding land cost exceeds Rs.6000 but is below Rs.10000 the interest rate is 7 percent.

Under the LIG housing schemes a family with monthly income up to Rs.1500 will get 85% loan assistance from HUDCO at 9 percent interest for 15 years. The loan assistance
from HUDCO for MIG houses costing a maximum of Rs.1 lakh in
75% percent of the cost. The amount is repayable in 15 years
for an interest of 12.5 percent. If the cost is only Rs.6000
interest rate is 11 percent.

Housing Development Finance Corporation

The Housing Development Finance Corporation (HDFC)
was established in 1976 with a view to build up a specialised
institution to channel to household savings as well as funds
from the capital market into housing sector with network of
branches spread over the country, HDFC has catered for indi
vidual requirements with retail landing thus providing an
impetus for the development of more ownership housing.

For financing its schemes HDFC has been implementing
several schemes in accordance with the National Housing Policy.
The main objective of the policy would be to motivate and
help all people and in particular the houseless and the inade
quately housed to secure for themselves affordable shelter
through access to land materials, technology and finances.46

46. Editorial, Plan to provide home for shelterless, Yojana,
It is suggested that with a view to concretising the policy and ensure its effective implementation with a definite time frame, perspective plans of action based, interalia, on the estimates of housing needs particularly of the identified priority groups and the resources which could be mobilised for meeting them over a period of time, would be periodically formulated in consultation with the state Governments and other agencies concerned.

Government cannot have the resources to provide houses to all the homeless people. Moreover the houses to all the constructed by the Government under different schemes are meant to meet the minimum needs of the people only one room, a small kitchen place and a latrine. It does not have enough space for sitting dining and prayer. To make the house a 'home' in the real sense, something more is to be done. The beneficiary should have the freedom to make his own decision on the type of house he wants to have. Active participation of the beneficiary would facilitate quality of construction. The technology of low cost housing should reach the rural poor so that they themselves can make their own houses. 47

47. Sarkar, D.C., Housing for all in rural areas, Kurukshetra, August, 1987, p.12.
The Government of India realised the importance of a comprehensive policy for housing and accordingly various social housing schemes were introduced not only by itself but also by the states. The Government level public bodies like Housing Boards, Development Authorities and other related agencies have engaged in providing social housing schemes.\textsuperscript{48}

**A.P. Housing Board Act**

The A.P. Housing Board Act, 1956 was originally passed by the former Hyderabad Government, subsequently it has been extended to the entire State of Andhra Pradesh by Act No.XLVI of 1986.

The Act is intended to establish a state-owned and controlled body to take up construction of houses in a big way to meet the growing demand for residential accommodation in cities and towns. In fact the Board has so far played a vital and laudable role in building activity and in providing both residential and commercial accommodation.

At the same time it cannot be gainsaid that there have been genuine public grievances against the Board both in the manner of allotting houses and the quality of construction. There have been instances where houses have collapsed for no other reason than poor quality of construction. These matters have been leading to largescale litigation between the allottees and the Board.

The salient feature of the Housing Board Act are presented here as under.

Housing schemes:

1. Duty of Board to undertake Housing schemes: Subject to the provisions of this Act and subject to the control of the Government, the Board may incur expenditure and undertake works for the framing and execution of such housing schemes as it may consider necessary from time to time, or as may be entrusted to it by the Government.

2. Matters to be provided for by housing schemes: Notwithstanding anything contained in any other law for the time being in force, a housing scheme may provide for all or any of the following matters, namely:

   a) the acquisition by purchase, exchange or otherwise of any property necessary for or effected by the execution of the scheme;

   b) the laying or relaying out of any land comprised in the scheme;

   c) the distribution or redistribution of sites belonging to owners of property comprised in the scheme;

   d) the improvement and clearance of slums in the area included in the scheme;

   e) the closure or demolition of dwellings or portions of dwellings unfit for human habitation;

   f) the demolition of obstructive buildings or portions of buildings;
g) the construction and reconstruction of buildings, their maintenance and preservation;

h) the sale (including on hire purchase system), letting or exchange of any property comprised in the scheme;

i) the construction and alteration of streets and back lanes;

j) provision of the draining, water-supply and lighting of the area included in the scheme;

k) the provision of parks, play-fields and open space for the benefit of any area comprised in the scheme or any adjoining area and the enlargement of existing parks, playfields, open spaces and approaches;

l) the provision of sanitary arrangements required for the area comprised in the scheme, including the conservation and prevention of any injury or contamination to rivers or other sources and means of water-supply.

m) the provision of accommodation for any class of inhabitants;

n) the advance of money for the purposes of the scheme;

o) the provision of facilities for communication and transport;

p) the collection of such information and statistics as may be necessary for the purpose of this Act;

q) any other matter for which, in the opinion of the government it is expedient to make provision with a view to provide housing accommodation and to the improvement or development of any area comprised in the scheme or any adjoining area or for the general efficiency of the scheme.
II. **Other duties of the Board:** It shall be the duty of the Board to take measures with a view to expediting and cheapening construction of buildings and the Board may for that purpose do all things for, viz.,

a) Unification, simplification and standardisation of building materials;

b) encouraging prefabrication and mass production of house components;

c) organising or undertaking the production of building materials required for the housing schemes;

d) encouraging research for discovering cheap building materials and evolving new methods of economic construction;

e) securing a study and sufficient supply of workmen trained in the work of construction of buildings.

**CONSUMER PROTECTION IN INDIA**

It is a good augury for the consumer movement that the Government of India have started giving serious thought to consumer protection. Though consumer protection was included as point 17 in the revised 20-point programme, progress on that aspect has been rather slow.

There are two options before the Government in promoting consumer protection. One is that Government could actively assist consumer organisations in disseminating information and providing education and help the consumers
to protect themselves. The other is that Government can intervene on behalf of consumers in their struggle for a fair deal and play the role of a balancing factor in the conflict between industry's and business' concern for profit and a square deal for consumers.

Naturally in a nascent democracy like ours with 70 per cent still illiterate and 49 per cent below poverty line, the consumers expect the Government to actively intervene on their behalf.

Welfare of the people is an objective of Government policies as enshrined in our constitution. Through its housing policy, the Government is also concerned with the socio-economic development of the people. The public sector is expected to reconcile growth with justice, social and economic, as declared in the directive principles of the constitution. The Government sector through its various forms of organisations wants to fulfill developmental policies. Housing Boards, being constituents of public sector are expected to fulfill the socio-economic needs of people (consumers) opting for housing services.

**Definition of Housing Consumer**

According to Consumer Protection Act a consumer has been defined as 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 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; and

II) Hires any services for 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 the services for considerations 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 first mentioned person;

III) "Consumer dispute" means a dispute when the person against whom a complaint has been made, denies or disputes the allegations, contained in the complaint.

'Defect' means

IV) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or as is claimed by the trader in any manner whatsoever in relation to any goods;

V) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of
performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

The above definitional aspects can be applicable to the applicants under Housing Board Schemes. Housing Boards accept money from the public and in return provide services by construction of suitable houses to them of certain categories. Thus a linkage can be established between the housing standards and consumer protection. Any imperfection, inadequacy of quality in construction of the house by Housing Board can be construed as deficiency or defect as defined, in the Consumer Protection Act 1986. So the housing consumers can go to consumer court for any redressal of their grievance regarding quality of construction and other amenities to be provided by Housing Boards while handing over the houses. Thus all the allottees under Housing Board Scheme can be defined as consumers even according to the various judgements of state and National Consumer Disputes Redressal Commissions which was established under clause clause C of section (a) of consumer protection act 1986..

**Consumer protection Vis-a-Vis Housing Consumers**

The following are some of important inferences drawn from judgements passed by the consumer redressal forums
in our country in respect of housing allottees, rather housing consumers.

1. THE COMPREHENSIVE CONSUMER

A recent ruling of the apex court holding that the statutory authorities such as the Lucknow Development Authority, the Delhi Development Authority or Bangalore Development Authority constituted under the relevant state Acts to carry on planned development of the cities concerned are amendable to the consumer protection Act, 1986 (COPA) for any act or omission relating to housing activity e.g., delay in delivery of possession of the houses to the allottees, non-completion of the flat within the stipulated time, or defective or faulty construction, etc. These judgements go a long way in facilitating quick redressal of grievances of thousands of allottees of flats in several urban centres by the Housing Boards, etc.

Justice R.M. Sahal, who delivered the judgement of the Bench speaking of himself and Justice Kuldip Singh in what is known as the Lucknow Development Authority case, said that under the COPRA, the right to approach a state or a national commission or a consumers forum (as the case might be) "vests in the consumer for unfair trade practice or defect in supply of goods or deficiency in services".

The word "consumer" which is a comprehensive expression extends "from a person who buys say commodity to consume
either an eatable or otherwise from a shop, business house, corporation, store, fair price shop to use of private or public services" the Bench said.

Advering to the definition of "consumer" in the Act, the judgement explained that "it is not only the purchases of goods or hirer of services but even those who use the goods or who are beneficiaries of the services with the approval of the person who purchased the goods or who hired services, are included in it".

The COPRA aims to protect the economic interests of a consumer as understood in commercial sense and as user of service, the Bench noted.

It rejected as "not well founded" a plea of the Lucknow Development Authority (Appellant) that applicability of the COPRA having been confined to "moveable goods" only, a complaint filed for any defect in relation to moveable goods was covered under the COPRA and a complaint relating a house or a building or allotment of site could not have been entertained by the Commission.

The judgement pointed out that the allottees concerned (respondents) were aggrieved either by delay of possession of house or use of substandard material, etc, and therefore, they
claimed "deficiency in service" rendered by the appellant authorities.

After noting the definition of "service" in the COPRA which extends it (service) even to such facilities as are available to a "consumer" in connection with banking, financing, etc., - the judgement said that "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 a complaint is made is a statutory body but whether the nature of the duty and function performed by it is "service or even a facility" the Bench explained.

A development authority while developing the land or framing a scheme for housing discharges statutory duty the purpose and objective of which is "service to the citizens" it pointed out.

A Government or semi-Government body or a local authority is as much amenable to the COPRA as any other private body rendering similar service. Truly speaking, the Bench ruled, it would be a service to society if such bodies, instead of claiming exclusion, subject themselves to the Act and let their acts and commissions scrutinised as "public accountability is necessary for healthy growth of society".

When a statutory authority develops land or allots a site or constructs a house for the benefit of common man "it is as much a service as by a builder or a construction, the
judgement noted. The one is contractual service and the other, statutory service. When possession of property is not delivered within the stipulated period the delay so caused is "denial of service" if the service is defective or it is not what was represented, then it would be "unfair trade practice" under the COPRA.

The Bench also explained that "If a builder of a house uses substandard material in the construction of a building or makes false or misleading representation about the condition of the house, then it is the denial of the facility or benefit of which a consumer is entitled to claim under the COPRA". "A flat with a leaking roof or cracking wall or substandard floor is denial of service", the Bench ruled.

The entire purpose of widening the definitions (in the COPRA) is to include in it not only day to day buying of goods by a common man but even such activities which are otherwise not commercial but professional or service oriented in nature", the judgement said.

Another important question decided by the Court relates to the jurisdiction of the commission under the COPRA for payment of compensation for "harassment and agony to a
consumer caused by public officials. Another related question in this context was whether the society or tax payer should be burdened for oppressive and capricious act of the public officers or it be paid by those officers concerned responsible for it.

Every limb of the constitutional machinery, the Bench underlined, is "obliged to be people-oriented" and no functionary in exercise of statutory power can claim immunity except to the extent provided by the statute itself.

Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the statute such as the Commission (under COPRA) or the courts entrusted with responsibility of maintaining the rule of law, the Bench said.

Each hierarchy in the COPRA is empowered to entertain a complaint by the consumer for value of goods or services and compensation including for "injustice" suffered by a consumer in a given case.

A public functionary if he acts maliciously or oppressively and the exercise of power results in "harassment and agony" then it "is not an exercise of power but its abuse" and "no law provides protection against it", the judgement noted.

The Bench on the facts and circumstances of the case, in dismissing an appeal from the Lucknow Development Authority
(appellant) upheld the orders of the National Commission (under the COPRA) affirming the orders of the State Commission made on February 15, 1990, in directing the appellant-authority to pay 12 per cent annual simple interest for a specified period upon the deposit of Rs.1,16,107 made by the respondent in July 1988.

The State Commission also directed the appellant to hand over possession of the flat to the respondent without delay after completing the construction upto June 1990. If it was not possible for the appellant to complete the construction when it should handover possession of the flat to the respondent by April 5, 1990 after determining the deficiencies and the estimated cost of such deficient construction should be refunded to the respondent latest by April, 1990.

The respondent's complaint before the State Commission was that even after payment of the entire amount in respect of "cash down scheme" for allotment of an MIG flat in Lucknow under a scheme announced by the appellant the appellant was neither handing over "possession" nor completing the formalities and the work was still incomplete.

The National Commission in its orders, in overruling the question of "jurisdiction" (under the COPRA) raised by the appellant in this matter allowed a cross appeal from the appellant
and directed that, since the architect of the appellant had estimated in October 1989 the cost of completing the construction at Rs. 44,615, the appellant should pay the same to the respondent.

The National Commission further held that the action of the appellant amounted to "harassment, mental torture and agony of the respondent" and therefore it directed the appellant to pay a sum of Rs. 10,000 as compensation.

The apex court in upholding the order of the National Commission directed the appellant authorities to fix the responsibility of the officers who were responsible for causing harassment and agony to the respondent within a period of six weeks. The Bench also directed that the amount of compensation of Rs. 10,000 (awarded by the national commission for mental agony) "shall be recovered from such officers proportionately from their salary".

2) HOUSING SOCIETY TOLD TO PAY INTEREST AND ALLOT FRESH SITE

T.K. Nagaraja Rao of Jayanagar vs Jayanagar Cooperative Housing Society.

T.K. Nagaraja Rao of Jayanagar in the city, a member of the Jayanagar Cooperative Housing Society, was allotted a site in 1977 at Kadirenahalli Layout. Though he paid the full site value of Rs. 5,705.75, he was not given possession of the
site. The society told him that the Bangalore Development Authority (BDA) had taken over his site along with some others for civic amenities.

In 1985, Nagaraja Rao made an application to the society to allot him a fresh site in the new layout by transferring towards the cost of the fresh site the money which he had already paid. But there was no response from the society.

In 1990 he was aghast to see a building coming up on the site allocated to him, which was supposed to have been taken over by the BDA for civic amenities. Upon enquiry he learned that his allotment had been cancelled and the site was given to another person. He approached the Forum saying that despite all his efforts, he had neither been allotted a site nor his money refunded. The Forum ruled deficiency of service and negligence on the part of the housing society and ordered the management to pay 18 per cent interest on the Rs.5,705.75 from 1985 until a fresh allotment is made.

The housing society filed an appeal before the State Commission and not on its heels followed an appeal from Rao. In a recent judgement, that State Commission ruled that the opposite party (the society) had failed to forward concrete reasons as to why it had not allotted Rao a fresh site since
1985. It upheld the District Forum's order urging the society to pay interest on the amount since 1985.

The recently amended Consumer Protection Act, states unequivocally that all housing related services come under the purview of consumer courts. Such services include those arising out of allotment, defects in construction, occupation related services and maintenance issues.


ALLOT SITE OR REFUND DEPOSIT, SOCIETIES TOLD: Wilson Peter of Domlur had a problem. He had deposited Rs.71,040 with the Trinity Housing Building Co-operative Society Ltd. of Hebbal way back in August 1988 for a 50 ft x80 ft site. But neither had a site been allotted nor had he got back the money in the past five years.

Veena, an employee of Syndicate Bank in the city had deposited Rs.32,000 for a 40 ft x60 ft site with a bank employees' housing society in 1983. She had not been allotted the site even after 10 years. The society is amenable to refunding the money but without interest.

This dilemma is not unique to Peters or Veena. There are thousands of people who have their money blocked in Housing Societies with no signs of progress either way. Tired of waiting for things to happen on the housing front, Wilson Peters registered a complaint at the Forum against the Trinity
House Building Co-operative Society.

The council for the Society argued that the complaint was not maintainable under section 70 of the Karnataka Co-operative Societies Act, 1959 and, therefore, Peters was not a consumer. They said the money had been deposited with the Government to acquire lands, but the land owners had challenged the move and therefore, they were helpless in the matter.

The Forum in its order had clarified that Section 70 does not come in the way of the Forum entertaining such complaints as the complainant (Peters), by depositing the money for site allotment, had hired the services of the housing society. So the forum held that Peters was a consumer under the Consumer Protection Act.

The order, which reveals clear insight into the problem, reads thus:

"There are several instances where people have deposited large sums of money but have not been allotted sites. The common defence which the societies put forth in such cases is that the money advanced by members has already been spent over certain programmes and for reasons beyond their control they are not entitled to distribute sites. But they are unable to say what a person like the complainant has to do in such a situation no site allotted, no interest on the money and no refund of principle."
It ruled deficiency of service and negligence on part of the Trinity Housing Society and directed them to refund Peters the deposited amount at 18 per cent interest from 22.8.88 to the time of the refund, along with costs of Rs.100. A significant judgement indeed and one which offers hope to long-suffering members of housing societies.

4. Prem Sajanani Vs Ranka Developers and Builders.

*COPRA COMES DOWN ON BUILDERS:* Does the Consumer Protection Act (COPRA) cover a person who buys a flat from a builder/developer? This question was dealt with in detail in a recent order by the Karnataka State Consumer Dispute Redressal Commission.

Prem Sajanani of Lucknow filed a complaint before the Commission against M/s. Ranka Developers and Builders of the city saying that he had not been given possession of his flat at Ranka Corner Apartments, Cambridge Layout, Bangalore, despite having paid the full amount Rs.5,59,300 in timely instalments. The builders had promised to hand it over by the end of May 1989, but had not done so to date. The counsel for the builders raised an objection saying that the complainant could not be classified as "Consumer" nor could his allegations be classified as a complaint under the COPRA.
The State Commission held:

"there is no dispute that flats are immovable property and if it is the case of mere sale of the constructed flats, this commission have no jurisdiction to entertain complaints. But on careful perusal of the agreements, we are convinced that the agreements are not for sale of flats pure and simple. The intention of the respondents (builders/developers) in the city, develop it and build flats at the cost of the complainants.

The dominant aim is to construct apartments and make profits out of the services so rendered. The entire investment comes from the complainants". Further, the Commission said that since these people have hired the services of the builders they are consumers and therefore, covered by the Consumer Protection Act.

The State Commission also drew heavily upon the decision of the National Commission in the UP Avasevam Vikas Parishad (Housing and Development Board) Vs. Garima Shukla and others. In this case, the National Commission had held that the Housing Development Board was engaged in serving the public by providing houses and allotment of plots and houses to the public. Persons who had been allotted houses, flats or sites from the Board were consumer falling within purview of the COPRA, 1986.
In Sajanani's case the State Commission observed that no permanent power connection had been given to the building which has 92 flats and because of this, as per the builders own admission he could hand over the flats to no other party except five persons. The builder was not in a position to say when he would be able to get permanent connection.

Based on this the Commission ruled deficiency of service and said it was the duty of the builder to make sure he would get all the amenities before advertising for the flats. "He cannot at this late stage be allowed to disown his liability by putting the blame on public authorities", it observed.

The Commission directed M/s. Ranka Developers and Builders to pay Sajanani 18% interest on the sum of Rs.5,59,300 from July 10, 1991 till the date of delivery of possession of the flat in a fit condition to occupy with all necessary amenities including permanent power supply. It also directed the developers to pay the Consumers Rs.2,000 towards court costs.
Other Judgements on Housing Consumers Vs Builders

5. O.P.22/89 Dt.10.7.90 & 26.7.90 Common Cause of Vaishali Residential Scheme Vs. C.D.A. Reduction in the sizes of plots in categories A, B, C, D, & E of the Vaishali Scheme - Direction given to G.D.A. that allottees of plots in D & E category (Petitioners before National Commission) be given an opportunity to apply and take their chance for allotment of plots in the higher category viz. category 'C' along with other applicants.

6. (1991) CPJ 7 F.A.6 & 7/88 Dt.22.8.89 U.P. Avas Evam Vikas Parishad Vs. C.P. Sharma. Allottee of (flat/plot) a Housing Board is & 'consumer' - Complainant paid Rs.1,10,000 for ready built house - Failure to allot the same even after three years - Subsequently he was allotted a plot at Rs.58,023, Deficiency in service - State Commission awards interest on the amount of deposit for the relevant period - Refund of excess price on account of allotment of plot only - National Commission concurs, also awards interest on further delay in regard to the refund even after the State Commission had given its order.

7. (1991) CPJ 37 F.A.6/90 Dt.8.5.90 Kanhalyalal Mathur Vs. Rajasthan Housing Board. Failure to handover possession of the flat to the allottee after the specified date when he had deposited the full price thereof is 'deficiency' - Bound to pay interest at the rate of 12% from the date of deposit until delivery of possession.

8. (1992) CPJ 248 O.P.43/89 Dt.12.11.91 Yamuna Vihar (Block No.15) Residents Welfare Association Vs. Vice-Chairman, Delhi Development Authority) D.D.A did not fulfill the promise to provide drainage facilities in the colony and maintenance of proper hygienic conditions and environmental purity therein - Colony Yamuna Vihar - Hence the complaint - In compliance with the order passed by the National Commission the Municipal Corporation filed an affidavit before the Commission setting out the steps proposed to be taken to rectify the defects - National Commission's direction to Municipal Corporation to
implement the proposals within the time frame mentioned in the affidavit and also a direction to the D.D.A to make available to the M.C.D.D. necessary funds.

9. (1992) CPJ 437 O.P. 45/90 Dt.11.7.90 Lucknow Development Authority Vs. M.M. Sood. Delayed handing over possession of flat to complainant - There was also a sewage line in the courtyard of the premises causing inconvenience etc. to complainant - Compensation awarded by State Commission Rs.2,000 for the inconvenience besides interest for delayed possession - L.D.A. an organisation providing "service" within the ambit of the Act (U.P. Avas Evam Vikas Parishad Vs. Garima Shukla reiterated).


11. (1992) CPJ 66 F.A. 21 & 24/90 Dt.13.7.90 M.K. Gupta Vs. Lucknow Development Authority. Complainant paid full cost of M.I.G flat to the L.D.A. in time; flat also got registered in his name but there was considerable delay in handing over possession - Estimation of architect (on the approved panel of the authority) for completion jobs was Rs.44,650 - National Commission, enlarging the reliefs granted by the State Commission, ordered that Rs.44,650/- be paid to the complainant; also to pay interest @ 16% instead of 12% as directed by State Commission and compensation of Rs.10,000/- for the suffering undergone by the complainant.

12. (1992) CPJ 64 F.A. 68/90 Dt.11.10.90 Secretary - cum - Chief Engineer, H.P. Housing Board Vs. S.K. Ahluwalia Housing Board having allotted a constructed garage to the complainant in 1982 at a tentative cost of Rs.30,000/- did not hand over garage even after 6 years - Yet, after 6 years i.e. in 1989, it collected a further sum of Rs.49,000/- from the allottee - Delay in delivery of possession held to constitute deficiency in service - Complainant awarded Rs.16,000 as compensation - order of State Commission confirmed by National Commission.
13. Where builder failed to give possession of flat at promised time despite payment, the allottee is entitled to possession, interest on purchase money and costs of complaint.

   Sections 2(1)(0) r/w 2)1)(g) - Deficiency in Building service - Non-delivery of possession of flat at promised time - Whether a deficiency in service? (Yes) - Whether complainant is entitled to any relief? (Yes, possession, interest and costs) - Relief of compensation declined.

State Commission, Karnataka (p.452)

14. A flat promoter who enters into an agreement with a person for building flat & selling the same is rendering service within the meaning of section 2(1)(0) of the Consumer Protection Act.

   Section 2(1)(d)(ii) - a Flat promoter who enters into an agreement with a person for building flats & selling the same is rendering service - A person who enters into an agreement with flat promoters hires such service - Complaint by such person for deficiency in service is maintainable that it relates to purchase of immovable property

State Commission, Madras (p.468).

15. When the flat built by the Developing Authority has developed defects & cracks due to substandard material used in construction, the Authority is liable to get defects removed.

   Sections 2 & 14 - Complainant was allotted L.I.G flat in 1985 - Iron bars in the roof became visible & cracks developed in the walls due to sub-standard material - District Forum was perfectly justified in directing appellant to rectify the defects - Appeal is liable, to be dismissed.

State Commission, Delhi (p.545)
16. When the Housing Development Authority allotted house which were not complete in construction it is liable to compensate the allottee.

Section 2 & 14 - Complainant an association of 140 members allotted L.I.G flats under scheme for retired public servants - Evidence on record showing that the contractor had not done complete work in the flats as completion certificate was not issued - Though not possible to find out exactly which defects were left but taking into general defects, each allottee awarded compensation of Rs.2,500/-

State Commission, Delhi (p.546)

17. If on account of mistake on the part of officials of Development Authority the complainant could not be delivered possession of flat allotted to him then complainant in not liable to pay the price of the other flat allotted later at the enhanced price.

Sections 2 & 14 - Complainant allotted flat & Paid its price Rs.1,81,500/- - Possession not delivered as it was allotted to some body else - Another flat allotted to complainant after two years in the same locality - Complainant is not liable to pay the price at enhanced rate - Amount recovered in excess of Rs.1,81,500/- is liable to be refunded - Complainant is also entitled to compensation on account of delayed delivery of the possession of flat - Interest at 15% p.a on the amount deposited initially till 2nd flat was allotted, awarded.

State Commission, Delhi (p.541)

18. Where Housing Board did not give possession despite payment, the refund of money with appropriate running interest compensation for inflation & mental pain together with costs have to be allowed to the complainant.

Section 15 - Appeal against order of District Forum - Complainant was not given possession of allotted tenament
despite with 15% p.a interest payment - District Forum awarded return money - Whether it should have allowed higher running interest and also compensation for inflation & mental pain & costs? (Yes).

State Commission, Gujarat (p.537)

19. Consumer Forums are not given powers it issue injunctions under the Consumer Protection Act 1986.

Section 17(a) (i) and 14- Opposite parties organised a scheme about "Aarsi Corner Flats" - Complainant purchased one flat - Scheme completed - Possession handed over in 1988 - No Cooperative Society formed - Complainant became also a member of the society - An adjacent flat was going to be transferred to a Vaidya dealing in Haras, Masa, Bhagander and such allied diseases - A great nuisance likely to be committed by the clinic of the proposed transferee injunction was sought from the commission - Refused.

State Commission, Gujarat (p.510)


Section 17(a)(ii) - Complainant party allowed by District Forum - Appeals by both parties against disallowed portions to them - Gujarat Housing Board advertised for cheap & good houses to needy people in big cities with 5 years initial deposit of Rs.5,000/- required - Complainant deposited the amount - Her priority No. was 501 - In M.I.G. category Three options were allowed in the scheme - 28 houses constructed for M.I.G. group converted into H.I.G. group for earning profit - Complaint for refund of Rs.5,000/- with 18% interest and Rs.10,000/- as compensation for mental shock - District Forum decreed refund or amount with interest and compensation - Appeals - Complainant demanded a house from 28 houses aforesaid - Opponents against decree for refund with interest and compensation.

State Commission, Gujarat (p.533).
21. Building is not a goods and its purchaser is not a consumer. Remedy lies in Civil Court.

Section 17(a)(i) - Complaint against building Organiser & others - Complaint regards purchase of building - Not a consumer of goods.

State Commission, Gujarat (p.529)

22. A person working as mason assistant on a construction site can not be said to be a Consumer who hires services of contractor for providing proper & safe conditions of working & to claim compensation for deficiency of such service.

Section 2(1)(d) - Complainant working as mason assistant on construction site - He feel down and received injuries & accident alleged due to deficiency in providing proper devices and strong plans - Claim for compensation - Complainant cannot be said to have hired services for consideration hence not a consumer.

State Commission, Kerala (P.575).
III (1993) CPJ 1120
KARNATAKA STATE CONSUMER DISPUTES REDRESSAL COMMISSION, BANGALORE

Present : Hon'ble Mr. Justice D.R. Vithal Rao, President; Mr. K.R. Ramaswamy Iyengar, Member; Smi. Susheela Chaluvaraju, Member

U.K. ASHOKA RAO —Complainant
versus
M/s. CYMA CONSTRUCTIONS & OTHERS —Opposite Parties

Complaint No.203 of 1991—Decided on 10-5-1993

Consumer Protection Act, 1986—Section 2(1)(g)—Deficiency—Housing—Evidence—Complainant applied for flat—Possession not given as promised—Complaint filed—O.P. averred construction could not be completed for reasons beyond contract—No evidence led by O.P.—Services rendered by O.P. are clearly deficient in nature.

Held : The opposite party has neither produced any material to prove these allegations made by it nor has lead any evidence either oral or documentary. Therefore, the averments made by the opposite party giving various reasons for the delay in construction of the flats has remained only at the stage of allegations. (Para 28)

Held further : Therefore, it is clear, that the opposite party has failed to complete the construction and deliver possession of the flat without any valid reason whatsoever. Therefore, it is clear from this material that the services rendered by the opposite party are clearly deficient in nature. (Para 30)

Result : Complaint allowed with costs.

Case referred :

ORDER

Mr. Justice D.R. Vithal Rao, President—The complainant averred that in pursuance of an advertisement issued by the opposite party Nos. 1 & 2, a builder, the complainant applied for a flat and the opposite party allotted a flat bearing No. 3 on the 5th Floor in Rajanigandha Building of Garden Apartments at No. 21, Vital Mallya Road (Grant Road), Bangalore, for a price of Rs. 2,25,000/- in the month of November 1979. The complainant made an advance payment of a sum of Rs. 5,000/- to the opposite party, on 30th July 1979 under Ex. C-1, the receipt issued by the opposite party for the same.

2. The complainant further averred that the opposite party issued an allotment letter on 30th July 1979 as per Ex. C-6 and specified thereunder the amounts to be paid by the complainant in instalments at various stages of construction. Thereafter, an Agreement of Sale as per Ex. C-2 on 12-11-1979 was drawn up, wherein schedule of payments consisting with the progress of work of construction was specified and the same was registered. Under Clause (6) of Ex. C-2, it was specifically stipulated that the possession of the flat on its full construction would be delivered to the complainant on or before 30th June 1980.

3. The complainant further averred that he made further payments of Rs. 1,30,000/-, Rs. 20,000/- and Rs. 45,000/- to the opposite party on 14-8-1980, 12-12-1980 and 28-11-1981 under receipts Exs. C-3, C-4 and C-5 respectively, that is, in all he made payment of a sum of Rs. 2,00,000/- to the opposite party by 28-11-1981. The balance of amount of Rs. 25,000/- was to be paid prior to taking possession of the said flat.

4. The complainant nextly averred that the opposite party did not deliver the possession of the flat to the complainant on or before 30th June 1980 as stipulated under Clause (6) of Ex. C-2 Agreement. The opposite party by its letter on 30th June 1982 as per Ex. C-8 informed the complainant that they were in the process of completing the balance work and would be able to give possession of the flat by January 1983. The opp. party even as per this letter did not deliver the possession of the flat to the complainant.

5. The opposite party, by its letter on 18th June 1990, as per Ex. C-11, demanded a sum of Rs. 1,39,500/- as escalation of costs from the complainant. The complainant gave a legal notice as per Ex. C-13 on 7-12-1990 denying to make the payment of escalation costs of Rs. 1,39,500/- demanded by the opposite party. The complainant at para (5) of the
legal notice, Ex. C-13, adverted the attention of the opposite party that the opposite party had agreed to complete the construction of the apartments immediately without claiming any further escalation of costs from the purchasers of the apartments in the month of April 1986. The material part of it reads as under:

"My client states that he is one of the members of M/s Garden Apartment Owners Association which fact is well known to you. Further, you had held various discussions with the said association which acted on behalf of its members including my client. As you are aware, in the meeting held in the month of April, 1986 between you and the representatives of the aforesaid association, you had committed and agreed to complete the construction of the apartments immediately without claiming any further escalation of cost from the purchasers of the apartments."

6. The opposite party gave its reply on 9-1-1981, as per Ex. C-14 and further reiterated the claim for escalation costs though the opposite party admitted in the said reply notice as per Ex. C-14 that there was such an agreement between the purchasers and the opposite party in the month of April 1986 agreeing not to claim the escalation costs. The material part of it at para (2) under Ex. C-14, reads thus:

"The minutes of April 1986 was between a few purchasers and us and in the same year they could not fulfill the payment condition and hence the arrangement agreed stood cancelled. On going through the various details on cost escalation sent to you, you will find that our demand for escalation in cost is most reasonable and justified."

7. The complainant nextly averred that the opposite party by its letter on 14-3-1991, as per Ex. C-15, admitted their failure to handover possession of the flat by 30th June 1980 as stipulated in Ex. C-2. The opposite party under the said letter suggested that the complainant could cancel the agreement and obtain the refund of the amounts paid. It also further suggested that the agreement could be revived on payment of the full escalation costs of Rs. 1,86,000/- and interest thereon.

8. The complainant on the basis of these averments sought the reliefs as narrated above.

9. Opposite Party Nos. 1 & 2 filed its version and admitted the fact that the complainant was allotted a flat as claimed by the complainant in the complaint. The opposite party also admitted the fact of receipt of a sum of Rs. 2,00,000/- from the complainant. The opposite party has specifically admitted this fact at para (6) and (10) of its version.

10. The opposite party further averred that it could not complete the construction of the apartments due to various reasons beyond their control. The opposite party has in this regard at para (11) of its version averred thus:

"The respondent state that they could not handover the flat on the stipulated date i.e., 30-6-1980 or in any date thereafter because of the reasons beyond their control as clearly mentioned in their letter dated 18-6-1980. The reasons are as follows:

Between 1-11-1979 and 28-2-1983 Cement was not available due to control. The appropriate Government had taken a decision to allot only 1,000 bags of cement per quota, to each high rise complex irrespective of the total requirements.

For garden apartments the total requirements amounted to Rs. 1,50,000/-. The construction was also delayed due to the work being stopped by the Municipal Corporation because of cancellation of all high rise building plans in 1980 till they were resanctioned in 1981. Between September 1983 to December 1984, the construction of high rise buildings were stopped by the Government by public notice immediately of the collapse of Gangaram Complex on or about 9-9-1989 which caused stoppage and delay in construction. Between January 1985 and September 1989, the construction was delayed due to the refusal by the Municipal Corporation to grant occupation certificate due to the State Government Circular of 1984 questioning the validity of plans of buildings having a height of more than 55 feet. There-
after, non-availability of construction material as well on non-payment of the costs of escalation by the complainant and others has been the said cause of the respondents being unable to complete the said project."

11. The opposite party further averred that it was justified in demanding escalation costs from the complainant considering the steep raise in the cost of building material and the cost of labour. The opposite party nextly averred that it was justified in cancelling the agreement itself as per its letter dated 26-11-1990 as per Ex. C-12.

12. The opposite party further averred that this Commission has no jurisdiction to entertain the complaint as the complainant cannot be classified as a ‘consumer’ and the complaint cannot be classified as a ‘complaint’ under the provisions of the Act.

The opposite party Nos. 1 & 2, on the basis of these averments, sought the complaint to be dismissed.

Opposite Party No. 3 is Garden Apartments Owners’ Association which is a formal party. The complainant has not claimed any relief against opposite party No. 3. Opposite party No. 3 has filed its version supporting the claim of the complainant.

13. During enquiry, the complainant filed his affidavit in evidence. The documents filed by the complainant with the consent of the learned Counsel for the opposite party came to be marked as Exs. C1 to C-15. The Order Sheet dated 7-1-1993, in this regard reads thus:

The complainant has filed the affidavit. He has also produced certain documents. Learned Counsel for the opposite party has no objection to mark all those documents. Ex. C-1 a receipt, C-2 a Agreement, C-3, C-4, C-5 receipts. Ex. C-6 to C-15 the correspondence is marked by consent of the opposite parties. Call on 8-2-1993 for further evidence.

14. The opposite party did not lead any evidence nor filed the affidavit in evidence nor got any documents marked on its part.

15. The opposite party went on taking time from the month of January 1993 onwards. When it came up finally on 17-4-1993 for hearing, even on that day, the opposite party sought time which was refused. The order sheet dated 17-4-1993 read thus:

“The learned Counsel for the opposite party seeks further time to lead evidence and argue the matter. The order sheets show that on each date of hearing, the complainant is coming from Hyderabad. There are absolutely no reasons to adjourn the matter any further. The opposite party had taken adjournment to report settlement. But neither the settlement is reported nor the opposite party is ready to proceed with the matter. In view of these facts, we heard the complainant. Post this matter for Orders. Call on 10-5-1993.”

16. We heard the complainant and perused the pleadings of the parties and the documents filed.

17. Having regard to the pleadings of the parties and the submission made by the complainant, the only point that arises for our consideration is whether there was any deficiency in service rendered by the opposite party, in consequence of which, did the complainant suffer any loss or injury, and if so, to what compensation the complainant is entitled to?

18. Before considering the evidence, it is necessary to notice a preliminary objection raised by the opposite party. The objection raised was that the complainant cannot be classified as ‘consumer’ nor the allegations contained in the complaint can be classified as a ‘complaint’ as defined under Sections 2(1)(d) and 2(1)(c) of the Consumer Protection Act, 1986; so this Commission has no jurisdiction to entertain the complaint.

19. The objection of the opposite party has to fail. The ruling of the National Commission in U.P. Awas Evam Vikas Nigam v. Karima Shukla, reported in I (1991) CPJ 1 covers this point. This Commission also has in Complaint Nos. 13, 67, 82, 107, 115 and 113 of 1991 held as under:

M/s Cyma Exports (Pvt) Ltd., is the developer, builder in all these cases. They proposed to build and sell flats in three apartment buildings at Bangalore, called as—
and entered into identical agreements with the complainants. The considerations were to be paid in instalments during various stages of construction and the learned Counsel for the respondents admitted that each of the complainants has paid the full consideration in respect of the flat agreed to be built for him.

The complainants in all these cases have alleged that even though the apartments were agreed to be completed and delivered during 1986 and 1987, the respondents have not so far done so but on the other hand have stopped the work on the buildings and are demanding escalation charges to recommence the work. They have prayed for directions to the Respondents to complete and deliver possession of the flats and also for compensation.

The respondents among other things have contended that the complainants are not consumers and, therefore, this Commission has no jurisdiction to try these complaints.

We have heard the learned Counsel on this question. It is argued by the learned Counsel for the respondents that the agreements, in question, relate to sale of flats which are immovable properties and therefore, this Commission has no jurisdiction to entertain these complaints. He argued that the respondents had purchased the lands on which the apartments are to be built and even though the consideration is paid in instalments by each of the complainants at various stages of the construction, what is agreed under each of the agreements is the sale of a particular flat, which is an immovable property, and therefore, the complainants are not consumers within the meaning of the Consumer Protection Act, 1986.

The Complainants' Counsel contended that complainants are consumers as they have hired the services of the respondents to develop land and build flats and to sell the same to them and it is not a mere sale of immovable property.

There is no dispute that flats are immovable property and if it is the case of mere sale of the constructed flats, this Commission will have no jurisdiction to entertain complaints. But on careful perusal of the agreements, we are convinced that the agreements are not for sale of flats pure and simple. In all agreements, the intention of the respondents is loud and clear. Their intention is to purchase prime land in the city, develop it, build flats at the cost of the complainants. The dominant aim is to construct the apartments and make a profit out of the services so rendered. Entire investment for the construction comes from the complainants. Even though in the ultimate analysis there is a sale of the flat involved, the dominant purpose is rendering of services. If that is so, we have no doubt in our mind that the complainants have hired the services of the respondents and they are all consumers within the meaning of the Consumer Protection Act, 1986.

We are fortified in this view by the decision of the National Commission in U.P. Avas Evam Vikas Parishad (Housing & Development Board) v. Garing Shukla and others in First Appeal No. 5 of 1989, reported in CPJ of January 1991, Vol. I. In the said case, the National Commission held that the Housing Development Board engaged in serving the public in the matter of providing housing by acquisition of land, development of sites, construction of house thereon and allotment of plots and houses to the public and, therefore, the persons who have been allotted houses/flats/sites from the Board are consumers falling within the definition of Section 2(1)(d)(ii) of the Consumer Protection Act, 1986.

In this case also the respondents have engaged themselves in acquiring the land, developing it and constructing flats thereon and sale of the flats to the intending purchasers. The decision of the National Commission applies on all facts of these cases.

For the above reasons, we hold that the complainants are consumers within the definition of Section 2(1)(d)(ii) of the Consumer Protection Act, 1986 and this Commission has jurisdiction to try these complaints."
20. It is not disputed that the opposite party, a builder, allotted flat No. 3 on the 5th Floor in the Rajanigandha building of Garden Apartments at No. 21, Vittal Mallya Road (Grant Road), Bangalore, in consideration of a sum of Rs. 2,25,000/- to the complainant. Ex. C-6, a letter of allotment issued by the opposite party and Ex. C-2, agreement for Sale of the said flat entered into between the complainant and the opposite party give the details of the amount paid as earnest money and the amounts to be paid by the complainant at different stages of the construction of the flat.

21. It is also not disputed that the opposite party received by 28-11-1981 in all a sum of Rs. 2,00,000/- from the complainant. The payments are evidenced by the receipts Exs. C-1, C-3, C-4 and C-5. The opposite party has also specifically admitted this receipt of money from the complainant at paras (6) and (10) of its version.

22. The recitals contained at para (6) of Ex. C-2, Agreement for Sale, read as under:

"Subject to the availability of cement, steel and other building materials, electrical and/or power connection and drainage connection and subject to force majeure including any act of God, drought, flood and any other natural calamity and/or war, restrictions by the Government Municipal Corporation or other public authorities or any other acts beyond the control of the Builders, the Builders agree to handover possession of the said flat to the buyer on or before 30th June 1980."

23. This would go to show, the opposite party was to complete the construction of the building and deliver possession thereof to the complainant on or before 30th June 1980. That is the evidence of the complainant and also the averments contained in the complaint. The opposite party failed to complete the construction by that date.

24. Ex. C-8, a letter written by the opposite party to the complainant dated 30th June 1982, wherein, the opposite party agreed to complete the construction and give possession of the flat to the complainant by January 1983. The material part of this letter, in this regard reads thus:

"We are pleased to inform you that since March 1982, cement is available freely and we have started working in full swing so that possession can be given to you at the earliest possible. So far, we have completed all structure work, brick work and fixation of door and window frames. Now we are in process of completing balance work like plaster, floor and bathroom tiles, sanitary and electrical work, fixing of door and window frames and painting work. We hope to give you possession by January 1983."

25. The opposite party could not complete the construction and deliver possession of the flat to the complainant even by that date.

26. Ex. C-11, is the letter written by the opposite party to the complainant on 18-6-1990, wherein, he had given various reasons for not completing the construction of the building and demanded the escalation charges from the complainant in a sum of Rs. 1,39,500/-. The recitals contained at para (5) of this notice would go to show that the opposite party had agreed not to collect the escalation charges from the complainant and other flat owners in the month of April 1986. This fact, the opposite party, has admitted in its reply notice dated 9-1-1991 as per Ex. C-14.

27. Ex. C-13, is the legal notice issued by the complainant to the opposite party dated 7-12-1990. The recitals contained at para (5) of this notice would go to show that the opposite party had agreed not to collect the escalation charges from the complainant and other flat owners in the month of April 1986. This fact, the opposite party, has admitted in its reply notice dated 9-1-1991 as per Ex. C-14.

28. The opposite party has pleaded various circumstances at para (11) of its version as referred above, which caused delay in constructing the building. The opposite party has stated that there was scarcity of cement, the Municipal Corporation had stopped the work, the Government had issued a public notice stopping the construction of work of all high rise buildings, etc. The opposite party has neither produced any material to prove these allegations made by it nor has lead any evidence either oral or documentary. Therefore, the averments made by the opposite party giving various reasons for the delay in constructing the flats has remained only at the stage of allegations. The opposite party has failed to establish these circumstances to justify in not completing the construction of the flat and handing over the possession of the same to the complainant as stipulated under Ex. C-2 and in its letter under Ex. C-8.
29. The material on record further would go to show that even in the month of April 1986, the opposite party had agreed to complete the construction of the flat at an early date and deliver the possession of the same without collecting any escalation costs as per Exs. C-13 and C-14.

30. Therefore, it is clear, that the opposite party has failed to complete the construction and deliver possession of the flat without any valid reason whatsoever. Therefore, it is clear from this material that the services rendered by the opposite party are clearly deficient in nature.

31. It is evident from the material on record, as referred above, that the opposite party failed to complete the construction and deliver possession of the flat to the complainant as per its promise made, and in our opinion, this lapse is due to the negligence on the part of the opposite party only.

32. The complainant who has made the payment of a sum of Rs. 2,00,000/- by the end of year 1981 and so far he has not been able to get the delivery of the possession of the flat from the opposite party, and therefore, the complainant is necessarily put to lot of suffering and injury, and therefore, the complainant is necessarily to be compensated for the same.

33. It is material on record, in the month of April 1986, the opposite party had agreed to complete the construction and hand over the delivery of the possession of the flat soon thereafter without collecting any escalation costs. So, in our opinion, it would be just and proper to award reasonable interest on the amount of Rs. 2,00,000/- paid by the complainant to the opposite party towards compensation from January 1987 till the date of delivery of the possession of the flat to the complainant in a condition fit to occupy the same with all necessary amenities.

ORDER

In the result, therefore, this complaint is allowed. Opposite party Nos. 1 & 2 are directed to pay interest at the rate of 18% p.a. on the sum of Rs. 2,00,000/- from 1-1-1987 till the date of delivery of possession of the flat to the complainant in a condition fit to occupy the same.
therefore constrained to file this complaint. As already pointed out, the opposite party offered before the Commission to complete the construction but failed to do so. Even today the construction is not over and according to the complainant this flat is only in the skeleton stage. We have therefore no hesitation to conclude that the opposite party has committed the gross deficiency of service and negligence and the complainant is entitled to compensation.

(Para 5)

(ii) Consumer Protection Act, 1986—Section 14((d)—Compensation—Housing—Complainant paid Rs. 1,09,000/- for construction of flat—Not constructed by O.P.—Complaint—O.P. liable to refund amount with 18% interest—O.P. further liable to pay Rs. 1,00,000/- as compensation.

Held: The complainant has paid Rs. 1,09,000/- and is entitled to refund of the said sum with interest thereon at 18% from the date of each payment. The agreement for construction entered into between the complainant and the opposite party was to complete the construction of the flat and deliver possession of the flat in 12 months but the opposite party has failed to do so. The price of Real property is now high. The complainant is therefore entitled to compensation in the sum of Rs. 1,00,000/- as loss sustained by him by the failure of the opposite party to complete and hand over possession of the flat in time and for mental pain and agony suffered by him. He is also entitled to costs.

(Para 6)

Result: Complaint allowed with costs.

Counsel for the Parties:
For the Complainant: Tr. G. Natarajan, Advocate.
For the Opposite Party: Tr. N. Radhakrishnan, Advocate.

ORDER

Mr. Justice S.A. Kader, President—This is a complaint under Section 17 read with Section 12 of the Consumer Protection Act.

2. The opposite party is carrying on business in Real Estate and is a builder. The complainant entered into an agreement with the opposite party for the construction of a flat in Plot No. 579, Alagiri-swamy Road, K.K. Nagar, Madras. He has purchased through the opposite party 1/4th undivided share in the site by the registered deed dated 30-7-81. A separate agreement has been entered into between the complainant and the opposite party for the construction of a flat for a sum of Rs. 75,000/-. The complainant has been paid the sum of Rs. 75,000/- on various dates. He has also paid Rs. 34,000/- over and above the original agreed amount of Rs. 75,000/-. But the opposite party failed to complete the construction and hand over possession of the flat. The complainant issued a legal notice on 21-7-88 to which the opposite party has not sent any reply. Hence this complaint for possession of the flat and refund of the excess amount received from the complainant together with interest and compensation. The Learned Counsel for the complainant has now made an endorsement that the flat is in a skeleton stage and has therefore prayed for refund of the amount paid by him with interest and compensation.

3. The opposite party admitted the agreement. He did not also deny that the complainant had paid Rs. 1,09,000/- for the construction of the house. But he claimed with the cost escalated and the total come to Rs. 1,19,677-50 and the complainant did not pay the excess amount of Rs. 10,677-50. Accordingly the opposite party the price of the cement went up extraordinarily and hence he could not complete the construction and the cost escalated.

4. Exh. A1 to A9 and B1 to B6 are marked by consent. Proof affidavit is also filed by the complainant. When the case was taken up for hearing the opposite party requested that a month's time may be given to complete the construction and report the matter. Accordingly a month's time was given on 3-6-92 and the case adjourned to 8-7-92. Meanwhile the opposite party filed a writ in W.P. No. 8923/92 before the High Court, Madras challenging the jurisdiction of the Commission and obtain stay of further proceedings in W.M.P. 12862/92. The High Court by its order dated 8-3-93 vacated the stay conditionally allowing the enquiry to go on and directing that the ultimate order passed by the Commission shall not be implemented without seeking the direction from the High Court. Accordingly the matter was taken up for hearing.
5. Exh. A1 is the deed of sales under which the complainant purchased 1/4th undivided share in the site. Exh. A2 is the agreement for construction of the flat by the opposite party for sum of Rs. 75,000/- There is also provision for increased price by about 10% in case of escalation. The complainant has paid the entire amount of Rs. 75,000/- in various instalments. Subsequently he has paid an other sum of Rs. 34,000/-. In all he has paid Rs. 1,09,000/-. The opposite party has not completed the flat so far. The complainant is therefore constrained to file this complaint. As already pointed out, the opposite party offered before the Commission to complete the construction but failed to do so. Even today the construction is not over and according to the complainant this flat is only in the skeleton stage. We have therefore no hesitation to conclude that the opposite party has committed the gross deficiency of service and negligence and the complainant is entitled to compensation.

6. The complainant has paid Rs.1,09,000/- and is entitled to refund of the said sum with interest thereon at 18% from the date of each payment. The agreement for construction entered into between the complainant and the opposite party was to complete the construction of the flat and deliver possession of the flat in 12 months but the opposite party has failed to do so. The price of real property is now high. The complainant is therefore entitled to compensation in the sum of Rs.1,00,000/- as loss sustained by him by the failure of the opposite party to complete and hand over possession of the flat in time and for mental pain and agony suffered by him. He is also entitled to costs.

7. In the result, we order as follows:

(1) The opposite party shall refund to the complainant the sum of Rs.1,09,000/- received from the complainant with interest at 18% p.a from the date of each payment till repayment.

(2) The opposite party shall pay compensation in the sum of Rs.1,00,000 to the complainant.

(3) The opposite party shall also pay cost of Rs.3,000/- to the complainant.

(4) All these payments shall be made within one month from the date of this order.

Complaint allowed with costs.
RAJASTHAN STATE CONSUMER DISPUTES REDRESSAL COMMISSION, JAIPUR

Present: Hon'ble Mr. Justice S.K.M. Lodha, President, Mr. Damodar Thanni, Member.

RAJASTHAN HOUSING BOARD & OTHERS
—Appellant/O.P.

versus

KRISHANPAL DHIR
—Respondent/Complainant


Consumer Protection Act, 1986 — Section 2(1)(g) — Deficiency — Compensation — Complainant allotted a house by O.P. — House on corner plot — Complainant paid extra charges for DC/SDC houses — There was road towards the west of house — Closed by O.P. — Complaint — Whether deficiency in service? — (Yes) — Whether complainant entitled for compensation? — (Yes).

Held:
The stand taken by the learned Counsel for the appellants is contrary to what is contained in the map Ex. 1 which leaves no doubt in our mind that the plot on which the house was constructed and the allotment-cum-possession letter was issued was a corner plot and admittedly that situation has been changed in Sept-Oct. 90 after the issuance of the first allotment-cum-possession letter or the second allotment-cum-possession letter. (Para 4)

Held further:
By constructing a road so as to change the situation of the plot on which the house was constructed from corner plot to other situation for we need not make a detailed probe whether it is still SDC or not for the simple reason that the house allotted existed on a corner plot and admittedly that situation has been changed in Sept-Oct. 90 after the issuance of the first allotment-cum-possession letter or the second allotment-cum-possession letter. (Para 4)

Counsel for the Parties:
For the Appellant: Mr. R.K. Sharma, Advocate.
For the Respondent: Mr. Yashpal Garg, Advocate.

ORDER

Mr. Justice S.K.M. Lodha, President — Accept the order dated 8.4.90 passed by the District Forum, Jaipur in Complaint Case No. 1206/90 the opposite parties have filed this appeal under Sec. 15 of the Consumer Protection Act, 1986 ("the Act") herein the impugned order, the District Forum directed the opposite parties-applicants that the amount of DC/SDC which was paid by the complainant-respondent to the Rajasthun Housing Board ("the Board") may be set off against the dues that may be outstanding against the complainant.

2. The complainant-respondent was allotted House No. 40/11 in Mansarovar Colony, Jaipur after payment of the entire amount. The possession of the house was delivered to the complainant on 10.7.89 and since then the complainant is owner in possession of the house. The complainant has alleged that by allotment-cum-possession letter No. 495 dated 22.5.89 a sum of Rs. 5,668/- being extra charges for DC/SDC houses was recovered from him. It may be stated here that a revised allotment-cum-possession letter dated 5.3.90 was issued in which extra charges for DC/SDC houses mentioned were Rs. 5596/-. It is not in dispute before us that the complainant has deposited a sum of Rs. 5,668/- in pursuance of the allotment-cum-possession letter dated 22.5.89 being extra charges for DC/SDC houses which was used as way by inhabitants of the colony. It is said that opposite parties No. 2 and 3 on account of malice with the complainant constructed wall and closed it declaring that a commercial complex would be constructed. The grievance of the complainant is that the opposite parties had no right to deprive him of the facility of the road after realising extra cost for the house, it being constructed on a corner plot. The complainant has stated his grievances in detail in paras 4 of the complaint. The complaint dated 29.11.90 was filed praying for the grant of the following reliefs:

"ATTAH PRARTHNA PATTER PRASTUT KARNIVADENHAIKI PRARTHNA PATTER SWAIKARIYAJAKARVIPSHAGANKO NIRDESH DIYA GAYA KI WHA PRARTHI KA MAKAN KA CORNER PAHALE KI BHANTI PASCHIM KI AUR NIRMITSADAK

Result: Appeal partly allowed.
RAJASTHAN HOUSING BOARD A ORS v. KRISHAN PAL DHIR
KI AUR REHANA DAVA VHA PURB-PASCHIMDIWAARKOTURANTPRABHAV
SA APNA KHARCHAR PAR HATWA VHA PRARTH KO SHATIPURTI BATOOR DAS
HAZAR RUPEYA VIPAKSHGANO SA DILWAYA JAVA."

With the complainant, respondents submitted photographs, plan and copies of allotment-cum-possession letter.

3. A version of the case was filed traversing the allegations made in the complaint by opposite party No. 3. It was denied that any corner plot was sold by the opposite parties to the complainant. As regards the extra charges for SDC houses amounting to Rs. 5668/- and subsequently that amount was revised to Rs. 5596/- were mentioned. According to the opposite parties, the plot on which the house allotted is constructed was a SDC and not a DC. It was denied that there was any road on the western side of the complainant’s allotted house. It was also stated that the extra charges amounting to Rs. 5668/- mentioned in the first allotment letter or Rs. 5596/- mentioned in the second allotment-cum-possession letter were for SDC plot. Claim for compensation was denied. The District Forum heard the arguments on 22.3.91 and passed the impugned order as stated above.

Hence this appeal by opposite parties as aforesaid.

4. We have heard Mr. R.K. Sharms learned Counsel for the appellants and Mr. Yashpal Garg learned Counsel for the respondents and carefully examined the order under appeal in the light of the submissions made by the learned Counsel appearing for the parties. A perusal of the plan submitted with the complaint clearly shows that that house was built on a corner plot. There is no dispute about the correctness of the plan. It is also not disputed before us that the wall has been constructed by which allotted house ceased to be on a corner plot. As has been stated in the version of the case that a sum of Rs. 5668/- which is mentioned in the first allotment-cum-possession letter or for that matter a sum of Rs. 5596/- mentioned in the revised allotment-cum-possession letter was charged from the complainant for SDC. Mr. R.K. Sharma pressed for our consideration that the house even after the construction of the wall on the road is SDC for which extra charges mentioned at item No. 3 under the head ‘A’ cost of the house were recovered. It is surprising that neither in the first allotment-cum-possession letter nor in the second allotment-cum-possession letter the words DC were scored out. What is written is extra charges for DC/SDC houses. The stand taken by the learned Counsel for the appellants is contrary to what is contained in the map Ex.1 which leaves no doubt in our mind that the plot on which the house was constructed and the allotment-cum-possession letter was issued was a corner plot and admittedly that situation has been changed in Sept-Oct.90 after the issuance of the first allotment-cum-possession letter or the second allotment-cum-possession letter. We are not happy with the observations made by the District Forum while granting the relief to the complainant-respondent. The operative portion of the impugned order is as follows:-

"VIPAKSHIGHAN KO ADESH HOTA HAI KI YADI AVAS NO. 40/11 KA AVANTAN KA
SATHJARI NAKSHEY [FRADARAN 4 MAI]
MAI VARNIT SADAK KA STHAN SADAK
KANIRMAN NAIK VYAIAIK KAINDE
KA PRASTAVIT KARYA KRIJNIT HOTA
HAI TOPARIVADISA AVANTAN RUPIPATA
JO RAKAM VASULI JAI RAIHAI USMA
D.C./S.C. PATAJORAKAMVASSULIGAI
YA VASULI JANA WALI HAI. KO
AVANTAN KI KUL RASHI MAI SA KAM
KARDIYAKAYEURIR RAKAMKI VASULI
KI KARYAVISAT KABHI NAHI HOGI. YADI
YAHIRAKAM [SOLHA] ABTAK VASULIJA
CHUKI HO TO USAE 16% VARSIK DAR SA
BYAE SAHIT PARIVADI KA KHATA MAI
SAMAYOJITKIYA JAYAGA."

All these contingencies do not arise for the simple reason that extra charges mentioned at item No. 3 under the head ‘A’ cost of the house have already been paid by the complainant-respondent to the Board and there is no dispute in respect of that. By constructing a road so as to change the situation of the plot on which the house was constructed from corner plot to other situation for we need not make a detailed probe whether it is still SDC or not for the simple reason that the house allotted existed on a corner plot as stated above. The service rendered by the Board in this respect suffered from deficiency as envisaged by Sec. 2(l)(g) of the Act. The complainant had deposited the amount as mentioned at item No. 3 under the head ‘A’ cost of the house in the allotment-cum-possession letter. The erection of the wall will amount to a loss or at any rate injury to the complainant, and that was on account of the breach of condition which atleast constitutes negligence and complainant is entitled to compensation in respect of this amount. We,
therefore, modify the order passed by the District Forum and direct the opposite parties-appellants to pay Rs. 5668/- to the complainant within one month from the date of the receipt of the order failing which the complainant will be entitled to recover this amount together with interest @ 12% p.a. from the date of the filing of the complaint until realisation. There is justification in the submission of Mr. R.K. Sharma learned Counsel for the appellants that the costs awarded by the District Forum are unjust, arbitrary and unreasonable having regard to the nature of the controversy involved in the complaint and the time taken for the disposal of the complaint. The amount of cost is reduced to Rs. 500/- from Rs. 1,000/-. The order passed by the District Forum is modified as indicated above.

5. The appeal succeeds to the extent stated hereinabove. Parties are left to bear their own costs of this appeal.

Appeal partly allowed.

II (1993) CPJ 1064

THE STATE CONSUMER DISPUTES REDRESSAL COMMISSION, DELHI

Present: Hon'ble Mr. Justice R.N. Mittal, President; Miss S. Brar, Member; Dr. A.N. Saxena, Member.

N.K. GUPTA & ANOTHER —Complainants

versus

M/S. ANAND CONSTRUCTIONS (DELHI) PVT. LTD. & ANOTHER —Opposite Parties

C-145 of 1992—Decided on 9-3-1993

(i) Consumer Protection Act, 1986—Section 2(l)(d)—Consumer—Builder—Complainant purchased a flat from O.P.—Possession not given
—Complaint—Whether a consumer? (Yes)—Case Law referred. (Para 4)

(ii) Consumer Protection Act, 1986—Section 14—Builder—Complainant deposits various instalments towards flat with O.P.—Flat not delivered—Complaint—Whether complainant entitled for refund of amount deposited? (Yes).

Held: The complainants started depositing the instalments in February, 1993 but till date even the possession of the plot has not been taken by respondent No. 1 from D.D.A. In the circumstances we are of the view that the complainants are entitled to the refund of the amount deposited by them with respondent No. 1. (Para 5)

(iii) Contract Act, 1872—Section 230— Whether agent is personally bound by the contract entered into by him on behalf of the principal? (No).

Held: Section 230 of the Contract Act provides that the agent is not personally bound by the contracts entered into by him on behalf of the principal. However, some exceptions have been carved out in the said section. The case of the complainant does not fall in any of those exceptions. The name of the principal had been disclosed to the complainants by respondent No. 2 at the time when they entered into the agreement. In the circumstances respondent No. 2 is not personally liable to pay the amount. (Para 7)

Result: Complaint allowed with costs.

Case referred:

Counsel for the Parties:
For the Complainants: Mr. S.N. Pruthi, Advocate.
For the Opposite Parties: Miss Paramjit Kaur, Advocate.

ORDER

Mr. Justice R.N. Mittal, President—Briefly the facts are that respondent No. 1 is carrying on the business as developers and builders as a fesidiary of M/S. Shippara Construction Pvt. Ltd. Respondent No. 2 is an agent of respondent No. 1. The complainants purchase a flat consisting of area of 335
sq. feet in a commercial building to be constructed by respondent No. 1 in Laxmi Nagar Centre, as the instance of the respondents @ 398/- per sq.ft. They paid Rs. 85,000/- to respondent No. 1 in instalments including the initial instalment of Rs. 25,000/-. It is alleged that respondent No. 1 has not even taken possession of the plot from D.D.A. nor paid the instalments due to the D.D.A.

2. It is further pleaded that respondent No. 1 had been receiving the instalments from the complainants on false representation. Consequently the complainant has prayed for recovery of Rs. 85,000/- with interest @ 24% p.a. and Rs. 1,00,000/- as damages.

3. Respondent No. 1 in the written statement contested the complaint and, inter-alia pleaded the Commission had no jurisdiction to entertain the complaint. On merits they pleaded that they deposited Rs. 42 lacs with the D.D.A. towards the cost of the land. The D.D.A. had not delivered possession of the same to them. Respondent No. 2 in their written statement pleaded that they were not liable to refund the amount as the amount had been paid by them to respondent No. 1.

4. The first question that arises for determination is whether the complainants are consumers. The matter is not res integra and has been settled by the National Commission in U.P. Awas Evam Vikas Parishad v. Garima Shukla, I (1991) CPJ 1. In similar circumstances it was held by the National Commission that the Board constructs houses for the general public and is thus rendering service to them. The person who applies for flat/plot to such an authority was a consumer. Consequently, we are of the opinion that the complainants are consumers.

5. The second question that arises for determination is as to whether the complainants are entitled to refund of the amount. The complainants started depositing the instalments in February, 1993 but till date even the possession of the plot has not been taken by respondent No. 1 from D.D.A. In the circumstances we are of the view that the complainants are entitled to the refund of the amount deposited by them with respondent No. 1.

6. The third question that arises for determination is, whether respondent No. 2 is also liable to refund the amount to the complainants. It is argued by the Counsel for the complainants that the initial instalment of Rs. 25,000/- was paid by the complainant through respondent No. 1 and they agreed to purchase the plot on the joint representations of both the respondents. In the aforesaid circumstances it is argued that respondent No. 2 is personally liable to reimburse the complainant.

7. We have given due consideration to the argument but do not find any substance therein. Section 230 of the Contract Act provides that the agent is not personally bound by the contracts entered into by him on behalf of the principal. However, Come exceptions have been carved out in the said section. The case of the complainant does not fall in any of those exceptions. The name of the principal had been disclosed to the complainants by respondent No. 2 at the time when they entered into the agreement. In the circumstances respondent No. 2 is not personally liable to pay the amount.

8. Now the question arises what rate of interest the complainants are entitled to get. The complainants have claimed interest @ 24% p.a. In our view it is on the higher side. Consequently we grant interest to them @ 18% p.a. The amount of interest from the dates of deposit upto the date of filing the complaint i.e. 28.4.1992 at the said rate comes to Rs. 1,53,818/- as shown in Annexure ‘A’. Thus the total amount which is due to the complainant from respondent No. 1 comes to Rs. 2,38,818/-. The amount of interest from the dates of deposit upto the date of filing the complaint i.e. 28.4.1992 at the said rate comes to Rs. 1,53,818/- as shown in Annexure ‘A’. Thus the total amount which is due to the complainant from respondent No. 1 comes to Rs. 2,38,818/-. The amount of interest from the dates of deposit upto the date of filing the complaint i.e. 28.4.1992 at the said rate comes to Rs. 1,53,818/- as shown in Annexure ‘A’. Thus the total amount which is due to the complainant from respondent No. 1 comes to Rs. 2,38,818/-. The amount of interest from the dates of deposit upto the date of filing the complaint i.e. 28.4.1992 at the said rate comes to Rs. 1,53,818/- as shown in Annexure ‘A’. Thus the total amount which is due to the complainant from respondent No. 1 comes to Rs. 2,38,818/-. The amount of interest from the dates of deposit upto the date of filing the complaint i.e. 28.4.1992 at the said rate comes to Rs. 1,53,818/- as shown in Annexure ‘A’. Thus the total amount which is due to the complainant from respondent No. 1 comes to Rs. 2,38,818/-. The amount of interest from the dates of deposit upto the date of filing the complaint i.e. 28.4.1992 at the said rate comes to Rs. 1,53,818/- as shown in Annexure ‘A’. Thus the total amount which is due to the complainant from respondent No. 1 comes to Rs. 2,38,818/-.

9. For the aforesaid reasons we partly accept the complaint with costs and direct respondent No. 1 to pay to the complainants an amount of Rs. 2,38,000/- with interest from 29.4.92 till the date of payment at the said rates of 18% per annum within a period of 3 months failing which an action shall be taken under Section 27 of the Consumer Protection Act. Costs Rs. 2,000/-. The complaint allowed with costs.
ANDHRA PRADESH STATE CONSUMER DISPUTES REDRESSAL COMMISSION, HYDERABAD

Present: Hon'ble Mr. Justice A. Venkatarami Reddy, President; Mr. Pothuri Venkateswara Rao & Dr. Smt. J. Ananda Lakshmi, Members.

AISWARYA CONSTRUCTION — Appellant/O.P.

versus

TUMATI PADMA VIJAYA KUMARI — Respondent/Complainant

C.D.R.P. No. 8 of 1993—Decided on 12.2.1993

Consumer Protection Act, 1986—Section 15

Revision—Housing—Possession of flat to be delivered within one year from agreement—Flat not completed—Complainant paid all instalments except Rs. 3,000/-—Complaint seeking delivery of possession—District Forum directed complainant to deposit Rs. 3,000/- with Forum and directed O.P. to complete flat within one and half month—Revision.

Held: We are not inclined to agree with the said contention. By the interim direction, the entire amount due and payable by the respondent herein, was directed to be deposited before the District Forum, within a week and that evidently she complied with that order. It is now the responsibility of the builder to complete the construction within a period of one and half month. Since there is no direction of withdrawal of the amount, we consider it fit that as and when the builder completes the construction of the flat as directed by the District Forum, the amount of Rs. 30,000.00 (Rupees thirty thousands only) in deposit in the District Forum shall be paid to the builder.

Result: Revision disposed of.

ORDER


2. This case coming on for hearing upon perusing the memorandum of grounds file herein, and upon hearing the arguments of Mr. P. Prabhakar Rao, Advocate for the petitioner.

3. The Court made the following Order:-

According to the terms of the contract, the flat has to be delivered possession within a period of one year from the date of the agreement. Evidently, the flat is not completed within the time. The allottee of the flat paid all other instalments, except the last instalment of Rs. 25,000.00 and Rs. 5,000.00 at the time of the delivery of the possession. Therefore, he is prepared to pay that amount and sought a direction for delivery of possession. Pending the consumer dispute, the District Forum passed interim order stating that she should deposit Rs. 30,000.00 before the District Forum within a week from the date of the order, that is 06.01.1993 and the respondent shall complete the construction of the flat and deliver possession of the flat within one and half month from that date. This interim order is being questioned in this revision. The contention of the counsel for the petitioner is that unless the payment of the amount is directed, he is not in a position to complete the construction. Therefore, the interim order of the District Forum causes hardship to the petitioner. We are not inclined to agree with the said contention. By the interim direction, the entire amount due and payable by the respondent herein, was directed to be deposited before the District Forum, within a week and that evidently she complied with that order. It is now the responsibility of the builder to complete the construction within a period of one and half month. Since there is no direction of withdrawal of the amount, we consider it fit that as and when the builder completes the construction of the flat as directed by the District Forum, the amount of Rs. 30,000.00 (Rupees thirty thousands only) in deposit in the District Forum shall be paid to the builder. It is also submitted that one and half month time granted by the District Forum is not sufficient to complete the construction. In the circumstances, the time for construction and handing over the possession of the building to the complainant in C.D.No. 349 of 1992 is extended by a period of one month from today.

4. The Consumer Dispute Revision Petition is disposed of with the above directions.

Revision disposed of.
II (1993) CPJ 1116

STATE CONSUMER DISPUTES REDRESSAL COMMISSION, DELHI

Present : Hon’ble Mr. Justice R.N. Mittal, President; Miss S. Brar, Member

DR. (Mrs.) C.M. SETHI —Complainant

versus

AHLUWALIA CONSTRUCTION (INDIA) LTD. —Opposite Party

Case No. C-161 of 1992—Decided on 21-5-1993

(i) Consumer Protection Act, 1986—Section 2(1)(c)—Complaint—Fraud—Complaint filed—Allegation of fraud—Whether can be decided in summary proceedings ? (No).

Held : The allegations of fraud cannot be decided in summary proceedings as the parties do not get adequate opportunities to cross-examine the witnesses, produce evidence and prove documents. The proper Forum for that purpose is a Civil Court.

(Para 12)

(ii) Consumer Protection Act, 1986—Section 2(1)(c)—Complaint—Housing—Complainant booked flat with O.P.—Instalments not paid by complainant—Complaint filed for refund of money deposited—Writing O.P. to refund amount for domestic problems—Not asking for refund of amount for building not being constructed—Whether complainant be allowed to wriggle out of the contract ? (No).

Held : It is further relevant to mention that the facts show that the complainant has committed breach of the agreement and the respondent has been ready and willing to perform their part of the agreement. It is clear from her 1st letter dated 2-1-92 (Exhibit 27), wherein she wrote to the respondent that she was in need of the amount to honour domestic problems. It is thus evident that she was not asking for the refund of the amount for the reason that the building was not being constructed according to the promises made by the respondent or there was some default on the part of the respondent but for some other purpose. It has already been mentioned above that slabs on all the floors have been laid, brick work had been completed and plastering work had been started in the building. It is also evident from the aforesaid facts that the complainant has taken the plea of fraud in order to wriggle out of the contract and get back the money deposited by her for purchasing the flat. We are of the opinion that she cannot be allowed to do so.

(Para 13)

Result : Complaint dismissed with costs.

Counsel for the Parties :

For the Complainant : Mr. Surinder Chugh, Advocate.

For the Opposite Party : Mr. J.R. Midha, Advocate.

ORDER

Mr. Justice R.N. Mittal, President—Briefly the facts are that the complainant applied for registration for the allotment of an apartment in the residential complex proposed to be developed and constructed by the respondent company in Vaishali Township Scheme. It is alleged that she deposited an amount of Rs. 65,259/- as booking charges on 21-8-89. Later she had been depositing the instalments. In all she deposited an amount of Rs. 2,61,000/- including the amount of Rs. 65,250/- as detailed in Annexure ‘A’. However, the respondent has not given the flat to the complainant till date. Consequently it is prayed that the respondent be directed to refund the said amount alongwith interest @ 24% p.a.

2. The complaint has been contested by the respondent. They have inter-alia pleaded that the complainant is not a ‘consumer’ as defined in the Consumer Protection Act. It is further pleaded that the case contained intricate questions of law and fact and consequently the complaint is liable to be dismissed.

3. On merits it is pleaded by the respondent that they deposited the plans etc. for approval of the Ghaziabad Development Authority. However, when the plans were pending before them the government stopped all further actions with regard to the plot in question. The respondent challenged the order of the government before the Allahabad High Court and the Hon’ble Court directed the GDA on
20-11-90, to consider the plans submitted by the respondent and pass orders within two weeks. In pursuance of that order, the GDA had sanctioned their plans on 23-2-91. The excavation work was started immediately thereafter and completed in the beginning of March'91. They, after the excavation work, requested the complainant to pay the 5th instalment of 5% which was not paid inspite of various reminders. The ground floor slab was laid in September'91 and 6th instalment become due but that was not paid by her.

4. The second floor slab was laid in December'91 where upon the 7th instalment of 5% became due, which was demanded from the complainant on 2-12-91. She failed to pay the said instalment also. Thereafter a reminder dated 27-12-91 was issued to her to pay the 5th, 6th & 7th instalments of Rs. 32,625/- each to the respondent, but still no payment has been made by her.

5. The 4th floor slab of the building was laid in January 1992, where upon the 8th instalment of 5% became due and the same was demanded from the complainant on 30-1-92. Along with the letter of demand, it is alleged, photographs of the building as on 21-12-91, were not sent to her showing the progress of the work and she was requested to make the payment expeditiously to enable them to complete the work. However, despite repeated requests and reminders she failed to make the payments of the four instalments of Rs. 32,625/- each.

6. It is further pleaded that in Nov./Dec. '91 the complainant met the respondent and requested for refund of the amount on the ground that she urgently required the same for domestic obligation. Her request was followed by a letter dated 2-1-91. She wrote several letters to them to return the total amount paid by her. She also threatened that a complaint against them would be filed under the Consumer Protection Act, in case they failed to return the money.

7. It is further pleaded that the complainant failed to pay the four outstanding instalments of Rs. 32,625/- each and therefore she became liable to pay interest thereon. The respondent sent a notice to her calling upon her to withdraw her notice dated 7-3-92 and requested her to pay four outstanding instalments totalling to Rs. 1,30,500/- along with interest @ 24% p.a.

8. It is next pleaded that the complainant has raised another plea that the plot on which construction was raised, was in dispute and therefore the activities thereon had been stayed. This assertion, it is alleged, is incorrect. The other allegations made by the complainant are also denied by them.

9. It is also pleaded that the complainant has not approached the Hon'ble Commission with clean hands and her conduct has been unfair and tainted with illegalities. The cost of the flat is Rs. 6,52,500/- which has not been paid and thus she committed breach of the agreement. At present, it is pleaded, 7 floors of the building had been constructed. Thus the respondent was not guilty of unfair trade practice, as alleged by the complainant.

10. In order to appreciate the arguments of the parties a few more facts may be noticed. The respondent purchased the plot on which the flats were to be constructed, from the Ghaziabad Development Authority (hereinafter referred to as 'the Authority'). It was provided in the advertisement which was got published in 'Hindustan Times' dated 20-2-89 (Exhibit R-I) by the Authority, that trunk and external development had been provided and the allottees were required to develop internal services on the plot. The rate of the plot, which measured 4000 square meter, was Rs. 3,000/- per sq. meter. 50% of the total amount was to be paid by the allottee within three months of the allotment. The respondent got the plot in the draw of lot and they were informed by the Authority vide letter dated 16-5-89 (Exhibit R-II) that the plot had been allotted to them. They paid Rs. 12 lacs on 12th July 1989 and Rs. 48 lacs on 13-7-89. In July '89, after making payment of Rs. 60 lacs the present scheme was announced by them. The complainant applied for a flat on 21-8-89. The Authority issued NOC for submissions of plans to the respondent on 23-10-89. Thereafter on 17-11-89 the plans were submitted to the authority. However, on 11-1-90 the U.P. Government suspended the activity in the Township for the reason best known to them. The respondent was left with no other alternative but to approach the High Court against the illegal order passed by the Government.

The High Court vide order dated
20-11-90 (Exhibit R-17) ordered that the authority would consider the application of the respondent for the sanction of plans irrespective of the orders passed by the government, within a period of three weeks from the date of the application. In view of the order of the High Court the plans were submitted by the respondent and were approved on 23-2-91 (Exhibit R-18). They started construction work in the first week of March'91. In April'93 roof of 12th floor has been laid down and brick work in the building has been completed. Even the plastering work has been started.

11. The complainant’s husband Shri K.C. Sethi is the Additional General Manager of the Unitech Limited which is also constructing similar flats in the same area. The complainant inspite of that preferred to purchase a flat from the respondent. It goes a long way to show that the respondent is considered to be a good builder and enjoys the confidence of the people.

12. The main argument of the learned Counsel for the complainant is that a fraud had been played upon them as Ahluwalia Contracts (India) Ltd. issued a letter dated 25-8-89 (Exhibit R-6) to the complainant and informed her that she had been allotted flat No. 412 having three bed rooms, drawing and dining room and a kitchen in Vaishali Township U.P. He submits that on that date the said company had not come up into existence. The respondent’s Counsel submits that on that date the company was a Private Limited Company but its assets had exceeded the prescribed limit and thus, by operation of law, became a Public Limited Company. He further submits that it was through oversight that that letter head was used by the respondent’s staff. It is well-settled that the allegations of fraud cannot be decided in summary proceedings as the parties do not get adequate opportunities to cross-examine the witnesses, produce evidence and prove documents. The proper Forum for that purpose is a Civil Court. In the circumstances it will be proper, that the respondent should get the matter adjudicated from the Civil Court.

13. It is further relevant to mention that the facts show that the complainant has committed breach of the agreement and the respondent has been ready and willing to perform their part of the agreement. It is clear from her 1st letter dated 2-1-92 (Exhibit 27), wherein she wrote to the respondent that she was in need of the amount to honour domestic problems. It is thus evident that she was not asking for the refund of the amount for the reason that the building was not being constructed according to the promises made by the respondent or there was some default on the part of the respondent but for some other purpose. It has already been mentioned above that slabs on all the floors have been laid, brick work had been completed and plastering work has been started in the building. It is also evident from the aforesaid facts that the complainant has taken the plea of fraud in order to wriggle out of the contract and get back the money deposited by her for purchasing the flat. We are of the opinion that she cannot be allowed to do so.

14. In the end it may be mentioned that there appears to be no deficiency on the part of the respondent in rendering service to the complainant. It is well-settled that a purchaser can file a complaint against a builder in case there is any deficiency in service provided to him. As already observed there is no deficiency in the service in the present case on the part of the respondent. We, therefore, find no merit in the complaint.

15. For the aforesaid reasons we dismiss the complaint with costs subject to the above observations that she may seek remedy in the Civil Court, if she so desires. Costs Rs. 2,000/-.

Complaint dismissed with costs.
Consumer Protection Act, 1986—Section (1)—Defect—Housing—Complainant was allotted a flat in 1985—Complaint filed for rectification of cracks in roof—O.P. contended no grievance made at time of delivery of possession—Not possible to point out defect at time of delivery of possession—Only after use defect can be found.

Held: It is not possible for an allottee of a flat to find out at the time of delivery of the possession, that sub-standard material had been used in constructing that. It is only after the use of the flat for some time, they can find out the defects. The learned District Forum, in our view was right in holding that the cracks in the roof and walls developed on account of sub-standard material having been used by the D.D.A. A consumer cannot be allowed to suffer on account of negligence on the part of the appellant's officers.

Appeal dismissed with costs.

ORDER

Mr. Justice R.N. Mittal, President—This appeal has been filed against the order of District Forum No. 1 dated 21/24th August, 1992 for directing the respondent to get rectified the cracks in the roof and the wall joints in the flat allotted to the complainant.

2. Briefly the facts are that Shri Ram Chander complainant was allotted a LIG flat in Dilshad Garden, Shahdara, Delhi-110095, in February, 1985. It is alleged by the complainant that immediately after the allotment of the flat, the iron bars in roof of this flat become visible and cracks developed in the walls. A complaint was lodged with the D.D.A. and an Assistant Engineer inspected the house in November, 1987 and admitted in his letter on 10.11.1987 that there were cracks in the roof and the walls which required rectification.

3. It is pleaded that the house has not been repaired by the opposite party inspite of repeated requests. Consequently, it is prayed that the opposite party director to carry out the necessary repairs.

4. The opposite party contested the claim and pleaded that the flat was handed over to the complainant in good condition and therefore, he was not entitled to any relief.

5. The learned District Forum after examining the evidence on the record came to the conclusion that the material use in the flat was not according to the specifications and the structural defects remained therein due to laxity in supervision at the time of construction. Consequently, they directed the opposite party to rectify the defects. The opposite party has come up in appeal before the State Commission.

6. The only question that arises for determination is whether material according to the specifications was not used by the D.D.A. in construction of the flat. The learned Counsel for the appellant has vehemently argued that the complainant, respondent did not make any protest regarding the material at the time of delivery of the possession. He pointed it out, after expiry of a long period. According to the agreement between the parties the complainant was not entitled to any relief as claimed by him.

7. They have only considered the argument but regret our inability to accept the same. The Assistant Engineer after inspection of the flat observed in his letter dated 10th November, 1987 that the cracks similar to the Group-IV site (Under strengthening) had developed in the roof slab. He suggested that a similar action, as was taken in Group IV houses be taken by providing R.S. Joist at the centre of the roof slab and M.S. flats at the wall junctions to strengthen the slab and walls. From the above said letter it is clear that the flat had developed cracks due to sub-standard material. It cannot be believed that a new flat would develop cracks within a period of about two years if proper material had been used. It is not possible for an allottee of a flat to find out at the time of delivery of the possession, that sub-standard material had been used in constructing that. It is only after the use of the flat for some time, they can find out the defects. The learned District Forum, in our view was right in holding that the cracks in the roof and walls developed on account of sub-standard material having been used by the D.D.A. A con-
sumer can not be allowed to suffer on account of negligence on the part of the appellant’s officers. After taking into consideration all the circumstances of the case, we find no substance in the contention of the learned Counsel for the appellant and reject the same.

8. For the aforesaid reasons we do not find any merit in the appeal and dismiss the same with costs. Costs Rs. 500/-. 

Appeal dismissed with costs.

THE STATE CONSUMER DISPUTES REDRESSAL COMMISSION, DELHI

Present: Hon’ble Mr. Justice R.N. Mittal, President; Mr. B.L. Anand, Member; Dr. (Mrs.) Avtar Pennathur, Member.

GIAN CHAND MITTAL —Appellant/Complainant

versus

VICE-CHAIRMAN, D.D.A. & ORS. —Respondent/Opposite Parties

A.No. 110 of 1990—Decided on 26.11.1990

Consumer Protection Act, 1986 — Section 2(l)(d)(i) — “Consumer” — “D.D.A.” — Opposite party started deep sewerage work in front of complainant’s house — Complaint filed alleging that lot of water and sand flowed constantly into the trench and had damaged foundation of his house and hence claimed compensation — Opposite party resisted the complainant inter alia on ground of complainant being not a consumer — District Forum dismissed complaint — Hence appeal — Whether complainant is a consumer? (No).

Held: In the present case, there is no allegation of the complainant much less proof, that he hired services of the D.D.A. for doing any work. Merely because the D.D.A. is laying down the sewerage line for the benefit of the owners of the houses, it cannot be held that its services have been hired by the complainant. In the circumstances, the appellant is not a ‘consumer’.

Result: Appeal dismissed.

Counsel for the Parties:
For the Appellant: In person.
For the Respondent: Mr. Ram Murti Goyal, Advocate.

Important Point

Merely because the D.D.A. is laying down the sewerage line for the benefit of the owners of the houses, it cannot be held that its services have been hired by the complainant.

ORDER

Mr. Justice R.N. Mittal, President — This is an appeal against the order of the District Forum dated 3rd July, 1990.

2. Briefly, the facts are that the appellant is owner of House No. 122, Sreshtha Vihar, New Delhi. It is alleged that the Delhi Development Authority hereinafter referred to as D.D.A. began deep sewerage work of laying the main sewerage line in front of his house. It is further alleged that the Contractor did not take proper care to do the work and a lot of water and sand flowed constantly from his house into the trench, on account of which the foundation of the house was damaged badly. The house developed cracks at several places including the boundary wall. Consequently, he claimed Rs. 84,000/- on account of damages.

3. The complaint was contested by the respondent who pleaded that the District Forum had no jurisdiction to try the complaint as the complainant was not a consumer. It was further pleaded that the work of laying down sewerage was not taken up in a slip-shod manner. The damage to the boundary wall and the house of the complainant might have been due to some deficiency in the specification of the material used for construction of the house. It is next pleaded that the sewerage line was laid after cutting even the metallic portion of the road so that there should be no damage of any type to the buildings. The damage is not due to any act of the respondent.
4. The learned District Forum directed the defendant to repair the boundary wall of the complainant within a month of the date of the order. However, the damages claimed by the complainant were not granted to him. The complainant has come up in appeal against the said order to this Commission. D.D.A. has filed cross objections against the order.

5. It is contended on behalf of the D.D.A. that the appellant is not a consumer as defined in the Consumer Protection Act and therefore, he has no right to file this appeal. We have duly considered the arguments and find force in it. The word 'consumer' has been defined in Section 2(1)(d) which is as follows:

"consumer" means any person who —
(i) xxxxx
(ii) hires any services for consideration..............

6. It is evident from the above definition that a person who hires the services of another is a consumer.

7. In the present case, there is no allegation of the complainant much less proof, that he hired services of the D.D.A. for doing any work. Merely because the D.D.A. is laying down the sewage line for the benefit of the owners of the houses, it cannot be held that its services have been hired by the complainant. In the circumstances, the appellant is not a 'consumer'. Therefore, the District Forum had no jurisdiction to try the complaint. As we have held that the District Forum had no jurisdiction to try the complaint, it is not necessary to decide the appeal on merit.

8. Now we advert to the cross objections. In view of the fact that the District Forum had no jurisdiction to try the complaint, it could not direct the D.D.A. to repair the boundary wall of the complainant. We are, therefore, of the opinion that this part of the order of the District Forum is liable to be set aside.

9. For the aforesaid reasons, we dismiss the appeal. We however, accept the cross objections and dismiss the complaint of the appellant in toto. No order as to costs.

Appeal dismissed
P GOPALA SURREHMANYAN v. VICE CHAIRMAN. HOUSING COMMISSIONER

Floor Flat in Phase No. 5 Kukatpalle under Self Financing Housing Scheme. The Opposite party is Vice Chairman, and Housing Commissioner of A.P. Housing Board, Hyderabad. The reliefs claimed in the complaint are: (a) Awarding payment of compensation for delaying handing over the possession of the Flat beyond January, 1990; (b) Ordering refund of the enhanced cost of the Flat collected without seeking the extension of the two year limit from the Government and (c) Instructing A.P. Housing Board to complete construction of the Flat and hand over possession of the Flat with all facilities including electricity and water urgently.

2. The complaint came to be filed in the following circumstances. The opposite party on 10.5.1987 notified the proposed construction of flats at the places mentioned in the notification including Kukatpalle under Self Financing Housing Scheme. According to the notification the higher income group, i.e. four storied flats, will have an approximate plinth area of 812.72 sq. ft. for each flat and the approximate cost was mentioned as Rs. 1,28,000/- and 10% of the cost is to be paid alongwith the application. In the notification it was also mentioned that the flat will be completed in all respects within a period of 18 months from the date of execution of the agreement. The opposite party agreed to pay to the complainant the amount of Rs. 20,500/- on or before 16.9.90 before conducting lottery and before assigning the flats.

3. Complaining that the opposite party has not obtained sanction of extension of two year limit for enhancement of the cost of flat from government and is also not in a position to give possession of the flat with all amenities including electricity and water even now and as the complainant should have been intimated to take over the possession of the flat within a period of two years, January, 1990 the above C.D. Case is filed for the three reliefs already mentioned.

4. In the counter it was submitted by the opposite party that the estimated cost and determination of the final cost should always be based on the actual working of the scheme expenditure involved. The cost of the flat includes the cost of land, civil works service contracts like providing water, electricity etc. Hence the final cost will be determined after the completion of the building inclusive of the cost of the expenses incurred for providing amenities etc. That the opposite party is not profit making body and in self financing scheme project has to be taken up even before all the instalments are to be recovered from the allottees. The cost of the entire project is paid for and as such the allottees will have to bear the entire cost. Possession is delivered to the allottees with the cost of the flat is fully realised. After completion of the construction of the flat the complainant was informed by letter dated 16.8.1990 the reason for the delay in handing over the flat. The water connections...
am done by separate agencies known as Metro Water Works and it did not construct Over Head Reservoir by indicating its cost and capacity and did not lay down the feeder lines and distribution lines. Similarly, Electricity Board has also delayed the work in completing power connections. On the part of the opposite it has paid amounts demanded by the water works and Electricity Board. It is further stated that it is assured by the concerned department that the work is done rapidly and in all probabilities the petitioner - complainant would be given possession of the flat in 2 or 3 weeks time. It is denied that the petitioner is entitled to any refund of escalation of charges or compensation for the so called delay. It is lastly submitted that the petition is not maintainable in Commision constituted under the Consumer Protection Act, 1986.

5. In the reply affidavit, to the counter it was stated that on 27.5.1991 the opposite party - Housing Board directed the petitioner to take possession of the flat at the spot. On visiting it was noticed that the flat had no water and electricity. The Housing Board fixed tank and arranged bore well water on 10.6.91 on which date the complainant took possession of the flat. It was found that there was no water available when complainant's father visited the flat on 11.6.91 and on 13.6.91 on 13.6.91 the A.P. State Electricity Board asked the complaint to pay three months' consumption charges to release power supply early. The complaint therefore prayed that the State Commission may instruct the Housing Board for arranging regular water supply daily two times pending supply of Manjeera Water and also power so that he may occupy the flat immediately, reiterating once again the reliefs claimed in the main complaint.

6. Before taking up for consideration the submissions made by the complainant the objection of the opposite party that the complainant is not a consumer and hence the complaint is not maintainable under the Consumer Protection Act, 1986 can be disposed of. The National Commission in U.P. Avas Evam Vikas Parishad v. Garima Shukla 1 (1991) CPJ 1 held that the Board which undertook construction of buildings was engaged in rendering services for consideration and the allottees of houses by the Board fell within the definition of Consumer, under Section 2(1)(a)(ii) of the Consumer Protection Act. Hence the objection of the opposite party that the complaint is not maintainable is rejected.

7. Taking up the submissions of the complainant it is firstly submitted that under Clause 9 of the notification dated 10.5.1987 it was stated that the flat will be completed in all respects within a period of eighteen months from the date of execution of agreement unless circumstances beyond the control of the board warrant extension of the period which shall not exceed two years. The agreement for sale was entered into on 7.1.1988 and the flat was not delivered possession within a period of two years from 7.1.88 i.e. January, 1990, as there is delay in delivering possession of the flat the complainant therefore entitled for compensation for delay in handing over possession of the flat beyond January, 1990. In the agreement entered into it was stated that the purchase agreement made by the complainant would be completed within a period of two years from 7.1.88 i.e. January, 1990 as there is delay in delivering possession of the flat the complainant therefore entitled for compensation for delay in handing over possession of the flat beyond January, 1990. The opposite party intimated by a letter dated 16.8.90 to the complainant that the tentative cost was indicated in the notification as 1.28 Lacs for the first floor flat but during execution due to some exigencies and due to some additional items and also due to exorbitant amount being collected towards laying of Manjeera Water supply lines and external electrical mains by the respective departments the cost has been increased to Rs. 1.535 Lacs. It was also mentioned that the delay in giving possession of the flats is due to the reason that the Haydensbad Metro Water Works could not complete the construction of O.H.S.R. and laying of feeder line and distribution lines and that they are likely to be completed shortly. It was also mentioned that since self financing scheme the escalation cost as shown above is not paid by the allottee before the completion of the scheme. The complaint was therefore informed to make necessary arrangements for payment of Rs. 20,500/- before conducting lottery which is likely to be on 10.9.90. The complaint was also informed that the allottee who occupies the first floor flat has to remit a further sum of Rs. 5000/- before taking possession of the flat. The complaint paid the amount of Rs. 20,500/- on 5.10.1990. In the lottery as he got the first floor flat the complainant was intimated on 15.2.1991 that he has to pay a further sum of Rs. 5000/- After payment of the said sum of Rs. 5000/- the complainant was informed on 25.5.1991 to take possession of the flat at the spot and the complaint took possession of the same on 10.6.1991 after the opposite party arranged borewell water. No doubt in the notification it was stated that the flat will be completed within a period of two years from the date of the agreement i.e. by January, 1990 it could not be completed due to unforeseen circumstances. Under
Clause 2 of the agreement the purchaser agreed to pay the difference between the estimated cost and final cost. The final cost was intimated to the complainant on 16.8.1990. In the said letter the Housing Board explained the delay in giving possession of the flat is due to the reason that the Hyderabad Metro Water Works Department could not complete the overhead tank, feeder and distribution lines. Thus, the delay in giving possession is explained by the opposite party. The lottery was conducted on 20.1.1991 and the complainant was informed by letter dated 15.2.1991. As he got the first floor flat the plinth area of which has come to 899.32 Sft. instead of 812.72 Sft. as notified, the complainant was asked to pay a further sum of Rs. 5000/-. On payment of the said amount, the complainant was asked to take possession of the flat on 27.5.1991. But the complainant actually took possession of the flat on 10.6.1991. Thus, it is evident that after paying the final cost the opposite party on 24.4.91 intimated the allottees to take possession on 27.5.1991. The last amount of Rs. 5000/- towards final cost was paid sometime after February, 1991 and the complainant was asked to take possession of the flat on 27.5.1991 and that he actually took possession on 10.6.1991. It therefore cannot be said that there is a long delay in delivering possession to the complainant after payment of the final cost. We are satisfied that due to circumstances beyond control of the Housing Board possession could not be given within a period of two years of agreement and that the opposite party explained the reasons for the delay. Hence we are not inclined to award any compensation for the delay in handing over possession.

8. The complainant placed reliance on Sri U.M. Mallappa v. The Commissioner, Mysore Urban Development Authority, 1 (1992) CPJ 265 where in the Karnataka State Consumer Disputes Redressal Commission awarded compensation by way of interest on the sum deposited with the Development Authority as it failed to deliver possession of the building to the complainant in about 2 years from the date of allotment. Even in the said case it was observed that having regard to the number of houses to be constructed by the respondent therein, it is appropriate to allow six months time for completing the house and handing over possession of the same. It is not known whether any explanation was submitted by the Mysore Urban Development Authority for the delay in constructing the house and handing over possession. It is also not known from the facts of the case the date for payment of final cost to be paid by the allottee. But, in the instant case the reasons for the delay are explained and the final payment was made only some time in February, 1991 and delivery of possession was offered in May, 1991. Therefore, it cannot be said that after receiving final payment there is unavoidable delay on the part of the opposite party-housing board. The next decision relied upon by the Complainant is Messrs. Aar Pee Apartments Pvt. Limited v. Mrs. Shakuntala Devi 1(1992) CPJ 266. In the said case the complainant took a shop proposed to be built by the Aar Pee Apartments for a consideration of Rs. 59,334/- and paid Rs. 8900/- towards part payment of the price. The builder appellant therein did not get the plan sanctioned and therefore the question of constructing the building does not arise. There was also no satisfactory explanation for the delay in starting construction. In these circumstances, the State Commission directed refund of Rs. 8900/- with interest. Thus, the facts of the above case are different from the facts of the case on hand before us. In this case municipal sanction was obtained and in fact construction was completed but according to the complainant there was delay in delivering possession. Hence the aforesaid decision has no application to the instant case.

9. The complainant relied on the decision in Secretary cum Chief Engineer, H.P. Housing Board v. S.K. Ahluwalia 1 (1992) CPJ 64 (NC) in support of his contention. In the said case, constructed garage was allotted to the respondent on tentative cost of Rs. 3,00,000/- in 1982 and the respondent deposited Rs. 22,000/- by October 10, 1983. But there is a delay of more than six years in handing over possession of garage. Moreover, the Board compelled the allottee to pay price of the garage at the rate prevailing in 1989. The National Commission found that there is no justification for long delay of six years and that if the construction or delivery of possession of garage is going to be delayed the board should not have called upon the complainant to deposit Rs. 22,000/- and that therefore awarded a sum of Rs. 16,000/- representing the approximate aggregate interest on the sum of Rs. 22,000/-. On appeal the National Commission confirming the finding of the State Commission, held that there is no explanation as to why the appellant Board called upon the Complainant by letter dated May 9, 1983 to deposit two instalments of Rs. 10,000/- each on May, 25th 1983 and October 20, 1983, if there was no reasonable prospect of the garage being constructed and possession thereof delivered to the complainant shortly thereafter. After collecting the second instalment from the com-
CONSUMER PROTECTION JUDGMENTS 1993

plainant on October 20, 1983, there was total inaction and silence on the part of the Board for a period of nearly six years until September 4, 1989 when the complainant was informed by the Board that the cost of the garage had been further enhanced to Rs. 49,000/- and that he should deposit the balance amount of Rs. 27,000/- within a period of 45 days. But in the instant case there is explanation as to why there is delay in completing the construction. Moreover the final cost was paid only sometime in February, 1991 and possession was handed over in May, 1991. Hence it cannot be said that there is unexplained extraordinary delay in handing over possession of the flat. Hence the aforesaid decision has no application to the facts of this case.

10. The complainant next relied on the decision of the National Consumers Disputes Redressal Commission in M.K. Gupta v. Lucknow Development Authority 1 (1992) CPJ 66 (NC). That is a case where the allotment of MIG flat was against cash payment. The appellant paid full amount of the flat and the flat was registered in his name. Since even after receiving the full cost, Lucknow Development Authority was not able to complete the construction work, having undertaken to deliver possession of the house to the appellant on payment of the full cost and after registering the sale deed the Lucknow Development Authority failed to deliver the possession after receiving full cost of the registration of the sale deed. It was held by the National Commission that "it was obligatory on the part of the respondent Lucknow Development Authority to have transferred the possession of the house complete in all respects immediately after the house was registered in the name of the appellant who had already made the payment in full. There was no justification for this delay and if the Respondent Lucknow Development Authority had any internal problems which led to the delay in completing the construction work of the house, the Complainant/Appellant cannot be made to suffer for the same." Hence it directed the possession of the house and compensation. But, in the instant case, final cost was paid in February, 1991 and possession was given in May, 1981. Hence it cannot be said that there is any unreasonable delay and the parties contemplated only on payment of the full cost possession has to be delivered. Therefore, the facts of this case are different from that of the above case. The complainant invited our attention to Lucknow Development Authority v. M.M. Sood II (1992) CPJ 437 (NC) where the National Commission upheld the order of the State Commission awarding interest to the complainant by way of compensation for the delay in delivering of the house as well as further sum of Rs. 2,000/- as compensation for inconvenience caused to him due to the existence of sewage line in his Courtyard. As mentioned earlier, in the instant case, there is not much delay in delivering of possession after payment of the final cost. The Housing Board explained the reasons for the delay which are beyond its control. We are therefore satisfied that the facts of the instant case are different from the case relied on by the complainant.

11. The last decision relied upon by the complainant is Kunhaiyalal Mathur v. Rajasthan Housing Board II (1991) CPR P 138 = I (1991) CPJ 37 first Appeal No. 690 decided on 3.5.1990 by the National Commission. In the said case, the appellant had deposited the full price of the flat. Even after receiving the full amount there was delay in handing over possession. The National Commission, therefore, directed that until possession of the house after completing it, is delivered to the complainant, the Opposite Party shall pay interest on the amount which is lying in deposit with the opposite party at 12% p.a. from the date of deposit until delivery of possession. In the instant case possession was already delivered after payment of the full cost. Hence the aforesaid decision has no application to the instant case. So we hold that after payment of the final cost there is no delay in delivering possession of the flat to the complainant. The delay in completing the huge number of flats undertaken by the board is due to circumstances beyond their control and they are intimated the same, before payment of the final cost, to the complainant explaining the delay. The complainant did not raise any objection that there is unreasonable delay or that explanation offered by the housing board for delay is not true. In these circumstances, we are not inclined to award payment of any compensation for the alleged delay in handing over possession of the flat.

12. The second contention is, that the Board violated regulation 23(3) of AP Housing Self Financing Housing Scheme Regulations, 1975 which reads "that the final determination of the cost should be done within two years from the date of execution of agreement under regulation 20. The said period may however be extended by Government in the case of such of the houses where final cost cannot be fixed within two years because the matter relating to land compensation or the payment of final bills to the contractors or pending in the Court." And that as the Housing Board has not obtained extension of time for fixing the final cost beyond 2 years time.
it cannot collect the difference between the final cost and tentative cost and the amount so collected has to be refunded to the complainant. It is to be seen that under the agreement the complainant agreed to pay the final cost as determined by the housing board. It is not the case of the complainant that the housing board has not incurred the final cost as determined by it. Even when the letter determining the final cost was communicated to the complainant as early as on 16.8.90 the complainant did not raise any objection for determination of the final cost and he paid the same without any protest. Since the complainant is not disputing the quantum of final cost arrived at it cannot be said that there is any deficiency in service. If the Housing Board has violated Regulation 23(3) of A.P. Housing Board Self Financing Housing Scheme - Regulations, 1975 it will not constitute any deficiency of service and the legality of the determination of the final cost fixed by the Housing Board without obtaining permission of the Government is illegal or otherwise cannot be gone into in these proceedings. Hence the second contention has no merit.

13. It is submitted by that complainant that direction should be given to the respondent-Housing Board to construct the flat and hand over possession of the flat with facilities including water and electricity urgently. Subsequent to the filing of the present C.D. Case, the housing board asked the complainant to take delivery of possession of the house on 27.5.199 and that fact that the complainant took possession of the same on 10.6.91. Hence the question of directing the opposite party to put the complainant in possession of the flat does not arise. But in the reply affidavit it is submitted by the complainant that the housing board has not arranged for regular supply of water (Bore well water) pending supply of Manjeer's Water. It was also mentioned that the Assistant Engineer, A.P. State Electricity Board has asked the complainant to pay three months' consumption charges for releasing power supply early. Since the flat was already given possession, the respondent has to provide water supply for the same. So far as power supply is concerned, the complainant has to make necessary deposits with the electricity board for releasing power supply.

14. In the circumstances, there shall be a direction to the Housing Board to arrange for supply of water regularly to the flat of the complainant.

15. In the result, the Consumer Dispute Case is disposed of with a direction to the Housing Board to expedite steps to be taken for arranging regular supply of water to the flat of the complainant within a period of two months from the date of the receipt of the order. There shall be no order as to costs.

Complaint disposed of.

I (1993) CPJ 65
KARNATAKA STATE CONSUMER REDRESSAL COMMISSION, BANGALORE
Present: Hcn'ble Mr. Justice D.R. Vithal Rao, President; Sri K.R. Ramaswamy Iyengar, Member; Smt. Sathiamo Chalivaraju, Member
Dr. H.S. DEVRAJ -Complainant
versus
B.D.A. -O.P.
Complaint No. 180 of 1991 - Decided on 2.4.1992

Consumer Protection Act, 1986 - Housing - "Delay in Possession" - Probable date of completion was December 1990 - Possession not delivered - Complaint filed - O.P. could have completed flat before November, 1991 - LIABLE to pay interest after November, 1991 @ 12% p.a.

Held: We feel that the Opp. party would have completed the construction of the building and handed over the delivery of the flat before the end of November 1991. For failure on behalf of the Opp. party in not delivering the flat, we feel that it would be proper to award interest on the amount deposited by the complainant at 12% p.a. from 1.12.1991 till the date of delivery of the flat to the complainant. The Opp. party, BDA shall pay costs of Rs.500/- to the complainant. (Para 3)

Result: Complaint allowed with costs.

ORDER

Mr. Justice D.R. Vithal Rao, President

The complainant is not present. Even on the last two dates of hearing he was not present. The Learned Counsel for the Opp. party has filed statement of objections and he fairly submitted that the BDA has received Rs.2,69,000/- as averred by the complainant for the allotment of the flat to him by 19.12.1990. The opp. party allotted a flat bearing No. MF 19/144 in Domlur II Phase Layout by its letter dated 19.9.1990 as per Ex C-1.
2. Ex.C-2 is the notification dt. 15.1.1990 under which the application for allotment of flats was called for by the Opp. party wherein the probable date of completion of construction has been shown as December 1990. The allotment letter Ex.C-1 shows that on 19.9.1990, the flat was under construction and would be delivered to the complainant as soon as possible after its complete construction. The payment as referred above was made by the complainant on 19.12.1990. The Opp. party has admitted that though construction is completed, the water and electricity connection are yet to be given and only thereafter the flat would be delivered to the complainant.

3. In the similar circumstances, in Complaint No. 217/91, 220/91 decided on 5.3.1992, we have held that the flat would have been delivered to the complainant within a reasonable time and in the event of failure of handing over the flat, the complainant would be entitled to interest on the amount deposited by him at 12% p.a. till the date of delivery of possession of the flat to the complainant. Having regard to the said principle, even in this case, we feel that the Opp. party would have completed the construction of the building and handed over the delivery of the flat before the end of November 1991. For failure on behalf of the Opp. party in not delivering the flat, we feel that it would be proper to award interest on the amount deposited by the complainant at 12% p.a from 1.12.1991 till the date of delivery of the flat to the complainant. The Opp. party BDA shall pay costs of Rs. 500/- to the complainant.

4. The complaint is disposed of accordingly.

Complaint allowed with costs.
RAJASTHAN STATE CONSUMER DISPUTES
REDRESSAL COMMISSION, JAIPUR

Present: Hon'ble Mr. Justice S.K.M. Lodha,
President; Mr. Damodar Thanvi, Member.

RAJASTHAN HOUSING BOARD
—Appellant/O.P.

versus
S.S. JAIN —Respondent/Complainant


(I) Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Housing — Flat allotted to one Fateh Singh — Complainant purchased flat — Filed complaint — Whether consumer ? — (No).

Held: The matter is with respect to immovable property and therefore there is no question of purchaser of goods as contemplated by Sec. 2(1)(d)(i) of the Act. In these circumstances the only controversy is whether the complainant is a consumer who can be said to have hired the services of the Board (opposite party) and the services rendered suffered from deficiency within the meaning of Sec. 2(1)(g) of the Act. Shri Fateh Singh is the original allottee who got himself registered as an applicant for the allotment of the house. Allotment letter was issued in his name and Flat was allotted to him. If there is any deficiency in service with respect to the allotment of flat, it is Shri Fateh Singh who can raise the grievance and not the complainant. (Para 8)

(ii) Consumer Protection Act, 1986 — Section 14(1) — Relief — Complaint filed seeking direction to O.P. to transfer flat in favour of complainant, who has purchased from original allottee — Whether such relief can be granted ? — (No).

Held: We have already produced the reliefs which the complainant has sought in the complaint. It is well settled by the National Commission that the Redressal Forum can grant only those reliefs which are enumerated in Sec.14(1) of the Act and not beyond that. Reference may be made to I(1992)CPJ 228, I(1992)CPJ 148, 1991(I) CPR 614 and 1991(1) CPR 361. In I(1992)CPJ 84 it has been laid down that in exercise of the inherent powers reliefs mentioned in Sec. 14 cannot be granted. The reliefs which the District Forum has granted are beyond Sec. 14(1) of the Act which it cannot grant. Our answer to question No. 2 is in favour of the Board (opposite party) and against the complainant. (Para 9)

Result: Appeal 371/91 allowed, 8/92 dismissed.

Counsel for the Parties:
For the Appellant : Mr. R.K. Sharma, Advocate.
For the Respondent : Mr. D.M. Malhotra, Advocate.

ORDER

Mr. Justice S.K.M. Lodha, President — These are two connected appeals arising out of the order dated 20.8.91 passed by the District Forum, Jaipur in Complaint Case No. 243/91. They were heard together and it will be convenient to dispose them of by a common order. Facts leading to these appeals may briefly be noticed:

2. Flat No. II/569, Jawahar Nagar, Jaipur was originally allotted to Shri Fateh Singh Charan by the Rajasthan Housing Board ("the Board" hereinafter). The complainant is said to have purchased the above flat by a deed of exchange and according to the conditions of the Board, the complainant initiated proceedings and got his name registered under the S.F.S. Scheme. After taking necessary proceedings, the complainant submitted an application for transfer. But the Board declined to transfer and the complainant filed the complaint before the District Forum. The complainant prayed for the following reliefs:

1. that a direction may be issued to the Board to transfer the flat in favour of the complainant before 31.3.91 within 7 days so that the registration may be effected on the original cost and he may not be required unnecessarily to pay registration fee on the market value.

2. that a sum of Rs. 16,000/- at the rate of Rs. 2000/- p.m. for 8 months may be awarded for the loss of rent suffered by the complainant.
(3) that a sum of Rs. 4,800/- at the rate of Rs. 600/- p.m. for 8 months for looking after the flat may be awarded.

(4) that a sum of Rs. 50,000/- may be awarded as compensation.

(5) that a sum of Rs. 376/- may be allowed on account of the payment of water and electricity charges.

(6) that a sum of Rs. 2,200/- may also be awarded on account of damages and costs for engaging a lawyer etc.

Thus in all the complainant claimed Rs. 73,376/- from the Board.

3. The opposite parties filed the version of the case traversing the allegations made in the complaint. Four preliminary objections were raised in the version of the case on behalf of the opposite parties which are as under:

(1) that there is no consumer dispute is involved between the complainant and the opposite parties as envisaged by the Consumer Protection Act, 1986 ("the Act" herein).

(2) that the reliefs which the complainant has sought in the complaint are not covered by Sec.14(1)(a),(b), (c) & (d) and as such cannot be granted.

(3) that by resolution No. 154/18 which was passed in a meeting of the Financial Commissioner and Secretary to the Government and Managing Committee of the Board, the transfer of the allotted house was discontinued before registering it in the name of the applicant. In other words that the registration will be effected of the allotted house in favour of the original allottee and he can thereafter transfer it.

(4) that the original allottee, Shri Fateh Singh Charan has not been impleaded as a party and in his absence the complaint is not maintainable.

4. Regarding merits of the complaint it was submitted that Shri Fateh Singh Charan got himself registered under the General Registration Scheme 1979 for allotment of a house in Jawahar Nagar Scheme, Jaipur under S.F.Scheme and flat No. 2/259 situate was allotted. Allotment letter No. JPR/DHC-1/734 dated 19.12.85 was issued. The possession was taken by Shri Fateh Singh on 10.6.86. It was denied that it was incumbent on the Board to register under the Kalpataru Scheme. It was submitted that for registration, it is necessary that there should be a registered application even for Kalpataru Scheme. It was submitted that registration will be first effected in the name of original allottee, Shri Fateh Singh Charan. It was pleaded that the complainant is not entitled to any of the reliefs asked for by the complainant. In support of the version of the case affidavit of Shri Babu Lal Kumawat, Office Supdt., Registration Department, Rajasthan Housing Board, Jaipur was submitted. The complainant submitted with the complaint an unsworn affidavit. The contents of the affidavit were not sworn before a competent person to administer oath. It is unverified. It cannot be called an affidavit. Photostat copies of the documents were submitted by the complainant with the complaint which have been marked as Ex.1 to Ex.14. The parties did not produce any other evidence before the District Forum. It heard the arguments and thereafter passed the impugned order. The reliefs granted to the complainant are contained in para 12 of the impugned order which is as follows:

"ATTAH MUNCH DWARA VIPAKSH AAYATAN MANDAL KO ADESH DEYA JATA HAII WHA EAK MAHA KABHETAR PARIWADI SHRI JAIN DWARA JAMA KARAI GAI RASHI 10,000/- RUPAE AVEM E S RASHI PAR DENANK 19.7.90 SA BHUGTAN KA ROJ TAK 18 PRATISAD WARSIKDARSA BYAGESAHIT BUGTAN KARAL AAYATAN MANDAL KO YAH BHI ADESH HOTA HAI WHA PARIWADI KOPARIWAD VEYA KA ROOP MA 500/- RUPAE KI BHI UKTH AVDHIMA MA ADAYGI KARA YADI AAYATAN MANDAL DWARA IS ADESH KA UPRANTH BHI NEKAT BHAWISHA MA AISA AYAH KO PARIWADI KA PAKSH NA AVANTITTH KAR PANJIKARAN KI KARYAHWAHI KARAI JATI HO TO US AVASTHA MA UKT RAKAM KI ADAYGI AVEM PARIWAD VAYA SAHIT KA ADESH KI PALANA AVESHAK NAHI HOGI ANYA KOYI PARITOSH PRADANKEYAJANAUKTHPRAKARSAMBHAV NAHI HONA SA IS SAMBANDH MA SASH PARIWAD KHRJ KAYA JATA HAI AVESHAN MANDAL SA YAH BHI APASKHIT HAI KI WHA SHRI CHARAN KO PARIWAD PRASTUT KARNA KAAVSA NAHIDAKER500/- RUPEYA KIRASHI"
5. Both the parties did not remain satisfied with the order appealed against. The opposite party "the Board" has filed Appeal No. 371/91 assailing the order praying that the complainant is not entitled to any relief and therefore the complaint should be dismissed. Appeal No. 8/92 has been filed by the complainant with a prayer that the amount of Rs. 73,376/- claimed by the complainant in the complaint should be awarded. The complainant submitted a sworn affidavit with the memo of appeal.

6. We heard Mr. R.K. Sharma, Advocate for the Board (opposite party) and Mr. D.M. Mathur, Advocate for the complainant in both the appeals. Having carefully examined the record and the order under appeal in the light of the submissions made by the learned Counsel for the parties, we have come to the conclusion that the order dated 20.8.91 deserves to be set aside and the complaint has to be dismissed. Three points crop up for consideration in these appeals. They are as under:

1. Is the complainant a consumer within the meaning of Sec. 2(1)(d) of the Act vis-a-vis the Board and if so is a consumer dispute involved as envisaged by Sec.2(10)(e) of the Act?
2. Could be reliefs claimed by the complainant in the complaint be granted under Sec.14(1) of the Act?
3. If the answers to the two questions referred to hereinabove are in affirmative whether the complainant is entitled to compensation from the Board (opposite party) and if so how much?

We propose to deal with the above 3 questions ad seriatim:

7. Re. Question No. 1. The "complainant", "complaint", "consumer", "Consumer dispute", "deficiency" and "service" have been defined in Sec. 2(1)(b), (c), (d), (e), (g) & (o) of the Act. Complaint has been defined in Sec. 2(1)(c). It is as under:

"(c) complaint means any allegation in writing made by a complainant that -

(i) as a result of any unfair trade practice adopted by any trader, the complainant has suffered loss or damage;
(ii) the goods mentioned in the complaint suffer from one or more defects;
(iii) the services mentioned in the complaint suffer from deficiency in any respect;
(iv) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods.

With a view to obtaining any relief provided by under this Act".

According to the definition of the complainant given in Sec. 2(1)(b) a consumer can be a complainant. The definitions of "deficiency" and "service" read as under:

"(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;"

"(c) "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, 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".

8. The matter is with respect to immovable property and therefore there is no question of purchaser of goods as contemplated by Sec. 2(1)(d)(i) of the Act. In these circumstances the only controversy is whether the complainant is a consumer who can be said to have hired the services of the Board (opposite party) and the services rendered suffered from deficiency within the meaning of Sec. 2(1)(g) of the Act. Shri Fateh Singh is the original allottee who got himself registered as an
CONSUMER PROTECTION JUDGMENTS

0. We have already produced the reliefs which the complainant has sought in the complaint. It is well settled by the National Commission that the Redressal Forum can grant only those reliefs which are enumerated in Sec. 14(1) of the Act and not beyond that. Reference may be made to I(1992) CPJ 228, I(1992) CPJ 148, 1991(1) C.P.R. 614 and 1991(1) CPR 361. In I(1992) CPJ 84 it has been laid down that in exercise of the inherent power reliefs mentioned in Sec. 14 cannot be granted. The reliefs which the District Forum has granted are beyond Sec. 14(1) of the Act which it cannot grant. Our answer to question No. 2 is in favour of the Board (opposite party) and against the complainant. It is also answered in the negative.

9. Re. Question No. 2: The other question is whether the relief sought by the complainant in the complaint can be granted by a Redressal Forum constituted under the Act. Sec. 14(1) of the Act reads as follows:

"Sec. 14(1) If, after the proceeding conducted under Section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to take one or more of the following things, namely:—

(a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
(b) to replace the goods with new goods of similar description which shall be free from any defect;
(c) to return to the complainant the price, or as the case may be the charge paid by the complainant;
(d) to pay such amount as may be awarded by it as compensation to the consumer for the loss or injury suffered by the consumer due to the negligence of the opposite party."

We have already produced the reliefs which the complainant has sought in the complaint. It is well settled by the National Commission that the Redressal Forum can grant only those reliefs which are enumerated in Sec. 14(1) of the Act and not beyond that. Reference may be made to I(1992) CPJ 228, I(1992) CPJ 148, 1991(1) C.P.R. 614 and 1991(1) CPR 361. In I(1992) CPJ 84 it has been laid down that in exercise of the inherent power reliefs mentioned in Sec. 14 cannot be granted. The reliefs which the District Forum has granted are beyond Sec. 14(1) of the Act which it cannot grant. Our answer to question No. 2 is in favour of the Board (opposite party) and against the complainant. It is also answered in the negative.

10. Re. Question No. 3: In view of the answers given to questions No. 1 & 2 it is clear that the complainant is not entitled to any compensation as claimed by him in the complaint. Question No. 3 is also decided against the complainant and in favour of the opposite party. It is also answered in the negative.

11. No other point survives for our consideration in the appeal.

12. The result is that Appeal No. 371/91 filed by the opposite party ("the Board") is allowed and the order dated 20.8.91 passed by the District Forum, Jaipur in Complaint Case No. 243/91 is set aside. The complaint shall stand dismissed. It follows that Appeal No. 8/92 filed by the complainant has no substance and it is, therefore, dismissed.

13. Appeal No. 371/91 is allowed and Appeal No. 8/92 is dismissed. In the circumstances of the case the parties are left to bear their own costs.
U.P. STATE CONSUMER DISPUTES REDRESSAL COMMISSION, LUCKNOW

Present : Hon'ble Mr. Justice K.S. Verma, President; Mr. S.P. Goyal, Member; Smt. Vidya Sonker, Member

RAM LAL —Complainant

versus

UPADHYAKH, D.A.A., GHAZIABAD AND ANOTHER —Opposite Parties

Case No. 188/SC/1991—Decided on 3-6-1993

(i) Consumer Protection Act, 1986—Section 17—Pecuniary Jurisdiction—Property—Complainant booked house with O.P.—O.P. increased cost by Rs. 84,000/- —Complaint against increase in cost filed before State Commission—Total cost of the house more than Rupees one lac—Whether complaint is within pecuniary jurisdiction of State Commission? (Yes).

Held: In this respect the reference be made to Section 17 of the C.P.A. 1986 which shows that to determine the financial jurisdiction of the claim the value of the property shall also be included. The value of the house is already more than rupees one lakh. The Complaint is well within the pecuniary jurisdiction of this State Commission. (Para 2)

(ii) Consumer Protection Act, 1986—Section 2(1)(c)—Complaint—House—Complainant booked house with O.P.—Allotment letter given—Cost of house increased by Rs. 84,000/- —Complaint against—Increase in cost intimated to complainant in allotment letter—Whether any justification to disallow increase? (No).

Held: We find that the increase in cost has been intimated to the Complainant by the G.D.A. in the very letter in which the specific house has been allotted by the G.D.A. to the complainant. We find that the option is available with the Complainant either to accept the allotted house at the increased price or not to accept the allotted house on the increased price. We find that in the end of his affidavit dated 3-7-92 (page 5) the Complainant has himself stated that the present market price of the house is Rs. 6 (six) lacs, whereas the increased price (including Rs. 84,000/- cover to only Rs. 4.70 lacs). We do not find any justification to disallow the increase of Rs. 84,000/- in the cost of the specific house in question. (Para 8)

Result: Complaint dismissed.

ORDER

Mr. Justice K.S. Verma, President—The facts of the case are that the Complainant applied on 30-7-88 for allotment of a house in the Rajendra Nagar Housing Scheme to G.D.A., Ghaziabad. The opposite party allotted to the Complainant house No. V.1/618 Rajendra Nagar Housing Scheme G.D.A. Ghaziabad vide letter dated 5-6-90. The Complainant has stated that in the beginning the estimated cost of Rs. 3.86 lacs was mentioned and they have referred to the letter dated 18-10-88 of the G.D.A. wherein 45% of the amount was to be paid in advance.

2. The Complainant's case is that vide their letter dated 5-6-90 (para 5 of the main Complaint) the opposite party increased the price of the house by Rs. 84,000/- due to increase in total covered area, land area & the cost of the building material. The Complainant in para 6 of the Complaint has relied on his letter dated 19-7-90 wherein he wrote to the G.D.A. to the effect that from October 88 to June 90, he was never informed about the increase in the cost of the house. The case of the Complainant is that the claim made by the G.D.A. for enhancement of price by Rs. 84,000/- is not justified. The Complainant has been opposed by the G.D.A. They have contended that since the dispute related to only Rs. 84,000/- which is the enhanced amount of the cost of the house, the State Commission has no jurisdiction to entertain the claim and that this Complaint be filed before the District Forum accordingly. On this point we have heard both the parties and we find that this
preliminary objection as raised has no merit. While determining the jurisdiction of the State Commission the value of the house has also to be taken into account. In this respect the reference be made to Section 17 of the Consumer Protection Act, 1986 which shows that to determine the financial jurisdiction of the claim the value of the property shall also been be included. The value of the house is already more than Rupees one lakh. The Complainant is well within the financial jurisdiction of this State Commission.

3. We accordingly repel the preliminary objections and hold that the claim is entertainable by the State Commission. During the intermediate proceedings on the case the Complainant sought permission to amend the Complaint which was granted to him. The G.D.A. raised preliminary objections to the amended Complaint.

4. We have considered pleas put forward by both the parties, on this point & we accepted the amended Complaint for being considered by us on merits.

5. On the merits of this case the main grievance of the Complainant is that the increase of price to the extent of Rs. 84,000/- in the cost of the house is arbitrary. We have examined the file and have considered the pleadings of both the parties. During the final arguments emphasis was also laid by the G.D.A. to the fact that the house is located on a corner plot which has more land than the normal plots (not the corner) and that the price of the land of a corner plot also 10% higher than the price of the normal plot (not the corner one). The Complainants main contention that the increase in price is arbitrary. On the other hand the G.D.A. in their counter affidavit have referred to specific provisions of the brochure of the scheme in question wherein in addition to other provisions, it is specifically provided that after completion of these houses, the final cost calculated by the G.D.A. will be final & acceptable to the allottee.

6. We find that the G.D.A.'s letter dated 18-10-88 does not allot any particular house to the Complainant but only reserves a house in the scheme in question and intimates estimated cost as Rs. 3,86,000/-. In this letter a reference to the terms & conditions of the brochure has been made.

7. We find that the actual allotment of the particular and specific house has been made by the G.D.A. for the first time vide their letter dated 5-6-90 and in this very letter the G.D.A. has informed the Complainant about the increase in cost of the house to be Rs. 84,000/- payable in 2 equal six monthly instalments before possession.

8. The only point under consideration before us in this Complaint case is as to whether the increase in cost by Rs. 84,000/- is valid or not. We find that the increase in cost has been intimated to the Complainant by the G.D.A. in the very letter in which the specific house has been allotted by the G.D.A. to the complainant. We find that the option is available with the Complainant either to accept the allotted house at the increased price or not to accept the allotted house on the increased price.

We find that in the end of his affidavit dated 3-7-92 (page 5) the Complainant has himself stated that the present market price of the house is Rs. 6 (six) lacs, whereas the increased price (including Rs. 84,000/- cover to only Rs. 4.70 lacs).

We do not find any justification to disallow the increase of Rs. 84,000/- in the cost of the specific house in question.

9. The Complaint is decided in the manner indicated above and is hereby dismissed.

Complaint dismissed.
JAIPUR DEVELOPMENT AUTHORITY v. ABUL SATTAR


Important Point

Redressal Forums constituted under the Act can grant only those reliefs which are enumerated in Sec. 14(1) of the Act and not beyond that.

ORDER

Mr. Justice S.K.M. Lodha, President—A common order dated 30.1.1991 was passed in 31 complaints filed by different complainants against (1) Secretary, Rehabilitation Department, Secretariat, Jaipur, (2) Assistant Engineer, Camp, Rawalji-ka-Bandha through Secretary, Jaipur and (3) Jaipur Development Authority, through Commissioner, Jaipur Development Authority, Jaipur by the District Forum, Jaipur. Aggrieved against that order Jaipur Development Authority has filed 31 appeals against each of the complainants. All the appeals were heard together. By this order we propose to decide Appeal No. 232/1991.

2. The complainant alleged that for the last many years he has been residing with his family in Khadda Basti, Adarsh Nagar, Jaipur. In order to rehabilitate the complainant permanently, the State of Rajasthan prepared a Scheme for the inhabitants of Khadda Basti under Rawalji-ka-Bandha Scheme. Lottery was drawn and a plot was allotted to him. The land of the plot was to be allotted @ Rs.3/- per sq. mtr. and the complainant was to get possession after paying the entire price. After paying the price he was to be put into possession of Plot No. K-17. The complainant has alleged that he has not been given the plot as agreed though he has deposited the amount. It was stated that the responsibility of the opposite party-appellant to take all proceedings for the allotment and to deliver possession to the allottees. It was stated that on 10.6.1991 all the formalities were completed but the possession has not been delivered. It is said that the complainant had gone several times to the opposite parties, but they did not give any
assurance for giving possession to the complainant. It is said that in order to protect himself against natural calamities, the complainant has suffered a loss of Rs.5,000/- for which the opposite parties are liable. The amount was spent to maintain himself. It was further submitted that the complainant was not able to do his work and incurred an expenditure of Rs.5,000/-. So the complainant is entitled to recover Rs.10,000/- from the opposite parties jointly.

3. The complaint was registered on 1.12.1990 by the District Forum: In support of that affidavit of the complainant-respondent sworn on 3.12.1990 was submitted.

4. After notice opposite party No. 3 raised certain preliminary objections in writing regarding the jurisdiction of the District Forum to entertain, hear and decide the complaint. A reply to the preliminary objections was submitted by the complainant. The District Forum by its order dated 11.3.1991 over-ruled the preliminary objections.

5. A version of the case was filed on behalf of the Secretary, Rehabilitation Department, Secretariat Jaipur. It was stated while denying the averments made in the complaint, that the land covered by Rawaiji-ka-Bandha Scheme has been placed at the disposal of the J.D.A. vide notification dated 29.6.1988 and it was delivered on 1.8.1988. With the reply, the notification dated 29.6.1988 was enclosed. It was prayed by the Secretary, Rehabilitation Department that the complaint may be dismissed.

6. The opposite party-appellant resisted the complaint by filing a reply dated 20.3.1991. It was submitted that the complainant failed to comply with the conditions of the allotment order dated 4.6.1981. It was submitted that the complainant failed to comply with conditions No. 5, 6 & 9 which are as under:

   (5) "आंदोली को राशि जी का बंधा योजना में आवारित मुख्य का विवरण. 12/6/88 से प्रयास समाप्त है तथा आंदोली नाराज बिगाड़ कलशी बलपुर पर उत्क्रम व उनसे सहयोग के किसी सदस्य का उन्नयन लिया प्रत्यक्ष वैष्णविक अन्य निर्देश से अधिकार नहीं होगा।

   (6) "आंदोली को आवंटन आदेश में कोई सूचना नही होती है कि इस आंदोली का अवारित मुख्य निर्देश प्राप्त होना। इसका प्रत्यक्ष वैष्णविक अन्य निर्देश से अधिकार नहीं होगा।"

7. As he failed to comply with condition No. 6 the allotment automatically stood cancelled. The complainant himself did not take the possession on 12.6.1981 and violated the conditions of the allotment. Reliance was placed by the opposite party-appellant on the averments made in para 1 of the complaint that he alongside his family is residing in Khadda Cachi Basti, Adarsh Nagar. It was stated that the complainant has not hired the services of the answering opposite party-appellant, for, he has violated Conditions No. 3 & 7 of the allotment. A plea of limitation was raised. In support of the version of the case affidavit of Shri Giriraj Agarwal, Zone Officer, Zone No. 3 was submitted. On record there is photostat copy of the receipt dated 10-6-1981 of Imamuddin and also allotment letter of Imamuddin and allotment notification. There is also photostat copy of receipt of Mohammad Yasin and allotment letter of Mohammad Yasin. There is photostat copy of receipt of Fakir and also allotment letter of Fakir. There is photostat copy of receipt of Abdul Hakim and allotment letter of Abdul Karim. The District Forum heard the arguments and passed the impugned order on 30-4-91 under challenge. We have carefully read the order under appeal. The material part of the order is as follows:

(6) "आंदोली को आवंटन आदेश में कोई सूचना नही होती है कि इस आंदोली का अवारित मुख्य निर्देश प्राप्त होना। इसका प्रत्यक्ष वैष्णविक अन्य निर्देश से अधिकार नहीं होगा।"

7. As he failed to comply with condition No. 6 the allotment automatically stood cancelled. The complainant himself did not take the possession on 12.6.1981 and violated the conditions of the allotment. Reliance was placed by the opposite party-appellant on the averments made in para 1 of the complaint that he alongside his family is residing in Khadda Cachi Basti, Adarsh Nagar. It was stated that the complainant has not hired the services of the answering opposite party-appellant, for, he has violated Conditions No. 3 & 7 of the allotment. A plea of limitation was raised. In support of the version of the case affidavit of Shri Giriraj Agarwal, Zone Officer, Zone No. 3 was submitted. On record there is photostat copy of the receipt dated 10-6-1981 of Imamuddin and also allotment letter of Imamuddin and allotment notification. There is also photostat copy of receipt of Mohammad Yasin and allotment letter of Mohammad Yasin. There is photostat copy of receipt of Fakir and also allotment letter of Fakir. There is photostat copy of receipt of Abdul Hakim and allotment letter of Abdul Karim. The District Forum heard the arguments and passed the impugned order on 30-4-91 under challenge. We have carefully read the order under appeal. The material part of the order is as follows:

(6) "आंदोली को आवंटन आदेश में कोई सूचना नही होती है कि इस आंदोली का अवारित मुख्य निर्देश प्राप्त होना। इसका प्रत्यक्ष वैष्णविक अन्य निर्देश से अधिकार नहीं होगा।"
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11. These are the reliefs which the District Forum has granted in favour of the complainant. Mr. Narpat Singh, learned Counsel for the appellant urged that the reliefs which the District Forum has granted to the complainant are not the reliefs which are enumerated under Sec. 14(1) of the Act. These reliefs are beyond the Act. Various alternative directions 'to do' have been issued. It is settled that such directions cannot be issued under the Act. Learned Counsel appearing for the complainant did not succeed in satisfying us that the reliefs which the District Forum has granted to the complainant could be granted by it under Sec. 14(1) of the Act.

12. The reliefs do not fall under Clauses (a), (b) & (c) of Sec. 14(1) of the Act. The District Forum did not grant any compensation to the complainant under Sec.14(1)(d) of the Act. The complainant has not filed any appeal against the order by which compensation was not granted to the complainant and the order has become final. The complainant has rest contented with that order. It is well settled by the decisions of the National Commission that the Redressal Forums constituted under the Act can grant only those reliefs which are enumerated in Sec. 14(1) of the Act and not beyond that. Reference may be made to [1 (1991) CPR 361 & 614].

13. There is an other aspect of the matter. The complaint was filed on 1.12.1990. The notification by which plots were allotted to the complainant including the complainant is dated 4.6.1981. Condition No.9 provides that the amount was to be deposited within 3 days and in any case upto 10.6.1981 failing which the allotment shall automatically stand cancelled. There is another condition No. 6. Condition No.10 provides that if there is violation of any of the conditions, the plots so allotted will be cancelled and the State Government shall take possession without any compensation and the amount deposited shall not be refunded.

14. From the facts that have been stated above, it cannot be said that there was any deficiency in service rendered by the opposite party-appellant so as to enable the complainant to maintain the complaint. The order under appeal has been passed on sentimental considerations in flagrant disregard of the provisions of the Act.

15. Before parting with the case we would like to observe that the complainants who have deposited the amount for the allotment of the land though under the notification they are not entitled to refund thereof still the State Government or for that matter the opposite party-appellant will on humanitarian considerations refund the amount against receipt. Besides this, if the complainant has not got any land in his possession the State Government or the opposite party-appellant will sympathetically on request being made by the complainant consider to allot a land on the condition which it may deem fit. We hope and trust that the opposite party-appellant will bear in mind these observations.

16. For the reasons aforesaid, the appeal has to be allowed.

17. The appeal is allowed and the order dated 30.4.1991 is set aside. The complaint shall stand dismissed. No costs.

ANDHRA PRADESH STATE CONSUMER DISPUTES REDRESSAL COMMISSION, HYDERABAD

Present: Hon'ble Mr. Justice A. Venkatarami Reddy, President, Mr. Pothuri Venkateswara Rao, Member.

DR. M. KRISHNA RAO—Appellant/Complainant

versus

THE CHAIRMAN, THE NATIONAL HOUSE BANK
—Respondent/O.P.


Consumer Protection Act, 1986 — Section 2(1)(o) — Service — Complainant deposited amount with Housing Finance Ltd. — Applied for loan — No loan granted — Complaint filed — National Housing Bank also made a party —
District Forum dismissed complaint against National Housing Bank — Appeal — Not a guarantor for repayment — Appeal dismissed.

Held: The third opposite party no doubt has powers of supervision. In exercise of that powers, the Housing Finance Companies (NHB) Directions 1989 were issued which were being amended from time to time giving certain directions to the Finance Companies with regard to the acceptance of deposits refund of deposits and their borrowing capacity. When it was brought to the notice of the National Housing Bank, during the course of inspection to check accounts, that the second opposite party has not compiled with the directions mentioned above, it immediately prohibited the company from accepting the deposits. It also froze the deposits of the second opposite party except for repayment of the same to the depositors. It also published the housing finance companies that were recognised on 23.10.90 and informed not to deposit with unrecognised Housing Financial Institutions and requested the public before depositing amounts to verify whether the Housing Finance Companies (NHB) Directions, 1989. It also sent replies to the persons who enquired in 1990 itself, that the third opposite party has nothing to do with the deposits accepted by the opposite parties 1 and 2 and that they are not guarantors. Under these circumstances, it cannot be said that after coming to know of the activities of opposite parties 1 and 2 the National Housing Bank kept quite without taking any action. Moreover, there is no contract entered into by the complainant with the third opposite party for rendering any service for consideration or guaranteed repayment of the deposit made by the complainant. The complainant has not hired the services of the third opposite party for any consideration, which has been paid or promised or partly promised. Hence it cannot be said that the third opposite party has undertaken to render any service to the complainant and accepted consideration.

(Para 6)

Result: Appeal dismissed.

Counsel for the Parties:

For the Appellant: Mr. M. Krishna Rao, Party in Person.

For the Respondent: None

ORDER

Mr. Justice A. Venkatarami Reddy, President
to the enquiries made earlier, it also sent replies to the enquiries made by G.V. Kamalakara Rao and P.V. Raja Rao with regard to opposite parties 1 and 2 and intimated them that the third opposite party had no dealings with opposite parties 1 and 2, and is not a guarantor.

3. On the basis of the aforesaid pleadings, the District Forum held that the third opposite party has nothing to do with the amount deposited by the complainant with the first opposite party and it is not a guarantor for repayment of the deposit made by the complainant to the first opposite party. It accordingly directed the second party to refund the amount of deposit with interest and costs and dismissed the complaint against the third opposite party i.e. the Chairman, National Housing Bank.

4. Aggrieved by that portion of the order dismissing the complaint against the third opposite party, the complainant preferred the above appeal.

5. It is submitted by the party-in-person that having regard to the provisions of Sections 30 to 34 of the National Housing Bank Act has supervision and control over the Housing Finance Companies both with regard to the acceptance of the deposits and functions, also directed inspection. It is therefore submitted that had the National Housing Bank performed its functions and effectively supervised, the second opposite party would not have been able to deceive the public by accepting deposits and cheating the public. Since the Bank failed to perform the supervisory functions vested in the bank, the bank is also liable for refund of the deposit amount made by the complainant to the second opposite party.

6. We are not inclined to agree. The third opposite party no doubt has powers of supervision. In exercise of that power, the Housing Finance Companies (NHB) Directions 1989 were issued which were being amended from time to time giving certain directions to the Finance Companies with regard to the acceptance of deposits refund of deposits and their borrowing capacity. When it was brought to the notice of the National Housing Bank, during the course of inspection to check accounts, that the second opposite party has not complied with the directions mentioned above, it immediately prohibited the company from accepting deposits. It also froze the deposits of the second opposite party except for repayment of the same to the depositors. It also published the housing finance companies that were recognised on 23.10.90 and informed not to deposit with unrecognised Housing Financial Institutions and requested the public before depositing amounts to verify whether the Housing Finance Companies have been implementing the directions issued by the Housing Finance Companies (NHB) Directions, 1989. It also sent replies to the persons who enquired in 1990 itself, that the third opposite party has nothing to do with the deposits accepted by the opposite parties 1 and 2 and that they are not guarantors. Under these circumstances, it cannot be said that after coming to know of the activities of opposite parties 1 and 2 the National Housing Bank kept quite without taking any action. Moreover, there is no contract entered into by the complainant with the third opposite party for rendering any service for consideration or guaranteed repayment of the deposit made by the complainant. The complainant has not hired the services of the third opposite party for any consideration, which has been paid or promised or partly promised. Hence it cannot be said that the third opposite party has undertaken to render any service to the complainant and accepted consideration. Thus, we are satisfied that the very complaint itself is not maintainable.

7. As mentioned earlier that the bank has taken prompt action on coming to know that the opposite parties 1 and 2 are carrying on the activities in violation of the Housing Finance Companies (NHB) Directions, 1989. Even if there is any violation of the statutory duty cast on the part of the third opposite party, it cannot be adjudicated under the provisions of the Consumer Protection Act, 1986.

8. For all the aforesaid reasons, the appeal is dismissed. There shall be no order as to costs.

Appeal dismissed.

II (1993) CPJ 1005

BIHAR STATE CONSUMER DISPUTES REDRESSAL COMMISSION, PATNA

President: Hon'ble Mr. Justice B.N. Sinha, President; Mr. K.P. Sinha, Member; Smt. Kalpana Ashok, Member

PRIYANJAN ROY —Complainant versus

BIHAR STATE HOUSING BOARD & OTHERS —Opposite Parties

Complaint Case No. 52/91—Decided on 2-4-1993
(i) Consumer Protection Act, 1986—Section 14(d)—Compensation—Housing—Complainant allotted house in 1966—Possession not given till date—Complaint filed—Another house of similar type to be allotted to complainant—O.P. directed to pay rent paid by complainant for accommodation.

_Held_: We feel that the Housing Board has been negligent even callous with regard to the allotment of a house and possession given thereof to the complainant. This is deficiency in service. We would, therefore, direct that the complainant be compensated by allotment of another house of similar type as to 3K43 and possession of the same be given to him. We would also direct that the complainant be further compensated by the Housing Board for the rental paid by him for accommodation hired by him after retirement. (Para 8)

(ii) Consumer Protection Act, 1986—Section 17—Complaint—Necessary Party—Complainant applied for house with Housing Department of the State Government—All assets and liabilities taken over by Bihar State Housing Board—Complaint filed—Stated that State Government is necessary party—Whether it is necessary party? (No).

_Held_: As for the point raised by the opposite party that the Secretary to the Government in the Housing Department was a necessary party suffice it would to refer to Section 63(1) of the Housing Board Act which lays down that all assets and liabilities relating to the work of allotment of houses/plots of the Housing Department of the State Government transferred to the Housing Board from the date of the Housing Board was constituted in 1972. Since the Housing Board took over all responsibilities and the assets of the Government it was not necessary for the complainant to make the State Government a party in the complaint filed by him. (Para 3)

(iii) Consumer Protection Act, 1986—Section 2(1)(o)—Service—Housing—Complainant applied for house—Allotted—Possession not given—Complaint—Whether O.P. providing service within meaning of Act? (Yes).

_Held_: Regarding the non-maintainability of this dispute under the terms of the Act we would like to refer to the findings of the National Commission in _U.P. Awas Evam Vikas Parishad v. Garima Shukla & Others_, 1 (1991) CPJ 1=1991 Consumer Cases 151. The National Commission in this case has held, "The Board is clearly engaged in rendering service for consideration to the public and therefore those who are allotted plots/houses from the Board are clearly consumers falling within the definition in Section 2(d) of the Act. Again under Section 2(o) of the Act the definition of the term 'Service' is very comprehensive; it means 'service of any description' including banking, financing, insurance, transport, processing, supply of electrical or other energy, entertainment etc. This leaves no room for doubt that the type of service which the Board renders to the public for a consideration is clearly covered by Section 2(o)." (Para 4)

Result: Complaint allowed.

Case referred:

Counsel for the Parties:
For the Complainant: In Person.

ORDER

Mr. K.P. Sinha, Member—This is a complaint filed by Mr. Prio Ranjan Roy against the Housing Board, Bihar. In the complaint petition it has been averred by the complainant that as early as 28.3.66 he was allotted House No. 3K43 by a Government order and the required deed registration was executed on the 15th May, 1966 which was duly registered on 1.8.66. After registration of the deed the District Development Officer, Ranchi wrote a letter to the Executive Engineer, Housing Department, Ranchi directing him to hand over possession of House No. 3K43 to Shri Roy. This house was located in Mohalla Bariyatu of Ranchi Town. Shri Roy also paid the first instalment of Rs. 3,000/- as stipulated and in spite of the specific order from the District Collectorate to the Executive Engineer of the Housing Department the possession of the house allotted to him was not given. Again on 13.7.67 a Government order was
issued for handing over possession of the house to the complainant. The possession of the allotted house, however, continued to elude Shri Roy. On 2.2.69 another order was issued allotting House No. 2K91 to Shri Roy. This house according to the complainant was in a most dilapidated condition and was not worthy of habitation, and he, therefore, laid down certain conditions for getting House No. 3K91 in lieu of House No. 3K43 which was originally allotted to him in the Bariyatu Housing Colony. In Annexure-IX of the complaint petition it has been said that all conditions imposed were accepted excepting payment of standard rent to him. The possession of House No. 3K91 was also not given to him and this house, it has been averred by Shri Roy, continued in the illegal possession of Smt. Sumitra Devi. It has been contended by the complainant Smt. Sumitra Devi was a Minister of the State Government and did not belong to Low Income Group category and hence could not have been allotted House No. 3K91. The possession of House No. 3K43 originally allotted to him was given to one Smt. Ishwari Devi.

2. The Bihar State Housing Board was constituted in the year 1972 after taking over all the assets and liabilities of the Housing Department of the State Government in respect of allotment of plots/houses and it was the Housing Board which took a decision on 16.9.74 to allot House No. 3K91 to Smt. Sumitra Devi. The net result in respect of the complainant has been that no house has been given in the possession of Shri Roy even though he satisfied all the pre-conditions. The complainant has averred that he approached the authorities in the Housing Board as also the Government but to no avail and he says he has been running from pillar to post in vain. Till date no house has been allotted to him and he has been put to difficulty with regard to a residential accommodation for himself after retirement in 1984. He contends that because of the house having not been given in his possession he had to hire residential accommodation on rent and he has paid Rs. 57,500/- as rent till the date of complaint (7.10.91). He was forced to hire the private house because of the house allotted to him by the Housing Department was not made over to him in physical possession. He has also averred that the landlord of the rental house has also filed an eviction suit No. 78/90 in the Court of Munsif Magistrate, Ranchi and for an increase in monthly rental amounting to Rs. 5,000/- per month. On account of these difficulties which he has been facing on account of the physical possession of the house have not been made over to him he has sought the following reliefs under the Consumer Protection Act:

1. A compensation of Rs. 6,25,000/- for the harassment cause to him.
2. A sum of Rs. 57,500/- paid by him as rent.
3. Refund of Rs. 5,300/- paid by him to the Housing Board as per terms and conditions of the Board in his favour alongwith interest @ 18%.

The opposite party—The Housing Board have filed their show cause and in this petition they have made the following points:

1. The State Government which had originally allotted the house in favour of Shri Roy has not been a party.
2. This dispute about the allotment of house to him is not maintainable under the provisions of the Consumer Protection Act, 1986 as the Board is not carrying on any business of House Properties rather it is a statutory body constituted for making available plots and houses to people.
3. The matter of alternative allotment to be made in favour of Shri Roy is still pending with the authorities of the Board and taking all these facts in the consideration it has been contended that the complaint filed by Shri Roy is fit to be dismissed. It will be worthwhile to point out here that in the show cause petition the facts as contended in the complaint petition of Shri Roy which has been duly supported by an affidavit filed by him has not been disputed and reference to various orders and letters have been said to be matters 'on record'.

3. We have heard the learned Advocates for the Housing Board and the complainant and there is
no doubt in our minds that allotment was duly made in favour of Shri Roy in the year 1966, but he was not given possession of the allotted house in spite of the deed having fulfilled all the conditions enjoined within the terms of the allotment. Instead the house was allotted to Smt. Ishwari Devi. Thereafter another house was allotted in his favour but the possession of the house was not given to him even though specially ordered. So done after the house habitable in lieu of the earlier allotment. This house was allotted to Smt. Sumitra Devi. Thereafter no other allotment has been made in his favour and even though much before his retirement he took steps for having an accommodation for himself, he had to hire a rented accommodation after his retirement in the year 1984. As for the point raised by the opposite party that the Secretary to the Government in the Housing Department was a necessary party suffice it would to refer to Section 63(1) of the Housing Board Act which lays down that all asset and liabilities relating to the work of allotment of houses/plots of the Housing Board of the State Government transferred to the Housing Board from the date of the Housing Board was constituted in 1972. Since the Housing Board took over all responsibilities and the assets of the Government it was not necessary for the complainant to make the State Government a party in the complaint filed by him.

4. Regarding the non-maintainability of this dispute under the terms of the Act we would like to refer to the finding of the National Commission in U.P. Avas Evam Vikas Parishad v. Garima Shukla & Others (1991) Consumer Cases 151=1 (1991) CPJ 1. The National Commission in this case has held, "The Board is clearly engaged in rendering service for consideration to the public and therefore those who are allotted plots/houses from the Board are clearly consumers falling within the definition in Section 2(d) of the Act. Again under Section 2(o) of the Act the definition of the term 'Service' is very comprehensive: it means 'service of any description' including banking, financing, insurance, transport, processing, supply of electrical or other energy, entertainment etc. This leaves no room for doubt that the type of service which the Board renders to the public for a consideration is clearly covered by Section 2(o)".

5. In the light of above findings of the National Commission we have no doubt that complaint filed by Shri Roy against the Housing Board is maintainable under the Act.

6. So far as the point of his case still being pending for decision in the Housing Board is concerned we would like to point out here that this has been said on a number of occasions in the argument before us and the time was prayed for and given for finalising the pending matter of Shri Roy, so that the Housing Board itself could redress the grievances of the complainant. It was submitted before the Commission that his case was to be taken up in the meeting of the Board which was fixed in January, 1993. Later it was postponed to February, 1993. In that meeting it is now being said by the department by a petition dated 31.3.93 that the case of Shri Roy could not be taken. On this date another adjournment was sought for and it has been prayed that the orders on the complaint fixed for today be not passed and the State Commission should avoid the decision in this regard till the next meeting of the Board. By postponing this matter again and again for a decision by the Housing Board regarding allotment of house to Mr. Roy which matter has been pending with for about 27 years now no useful purpose would appear to be served. The Board had ample opportunity over this long period to take a decision on the matter to redress the genuine grievance of the complainant.

7. Along with this petition dated 31.3.93 an unsigned and un-certified copy of the order of the Hon'ble Supreme Court in the matter of special leave against the First Appeal No. 10 of 1990 of the National Commission has also been filed. This order only says that the special leave granted. In the absence of any details above the facts of the case which have not been made available we just do not know whether the case of Shri Roy who is the complainant before us is affected in any way by the findings of the Hon'ble Supreme Court in that case. It has also not been indicated whether the Honourable Supreme Court heard the appeal and what orders were passed in the appeal. It has been mentioned in this petition that the details of this
We do not appreciate this belated request. There has been a number of hearings in this case and the opposite party had moved the enough opportunity to make its pleadings. We, therefore, do not think that there is any reason to postpone the orders in this case fixed for today.

8. After hearing the learned Advocates and perusing the records we feel that the Housing Board has been negligent even callous with regard to the allotment of a house and possession given thereof to the complainant. This is deficiency in service. We would, therefore, direct that the complainant be compensated by allotment of another house of similar type as to 3K43 and possession of the same be given to him. We would also direct that the complainant be further compensated by the Housing Board for the rental paid by him for accommodation hired by him after retirement. Shri Roy deposited a sum of Rs. 5,260/- as per terms of allotment of House No. 3K43 to the Board on various dates. This amount has to be returned to him and will also carry and interest @ 18% per annum from the date of deposit to the date of refund.

9. For all the tribulations, anxieties and the delay in making the accommodation available to Shri Roy by the Housing Board we would further direct the Housing Board to compensate to the complainant to the extent of Rs. 50,000/-. All these payments have to be made within three months of the date of the order and a similar house in a similar Housing Colony be made available to Shri Roy by the Housing Board within a period of three months from today.

Complaint allowed.

Result: Appeal allowed.

Case Referred

ORDER

Mr. Justice S.S. Dewan, President – The complainant before the District Forum has filed this appeal under Section 15 of the Consumer Protection Act, 1986 (for short ‘the Act’) against the order dated 18.9.1991 passed by the District Forum, Ludhiana, in Complaint Case No. 4 of 1991 by which his complaint has been dismissed on the ground that he is not a ‘consumer’ under the Act.

2. The facts leading to this appeal lie in a narrow compass. The Improvement Trust, Ludhiana, issued a brochure inviting applications for the registration of residential plots at Ludhiana under the scheme known as ‘Randhir Singh Nagar’ and in the year 1978, the complainant applied for a 200 square yards plot in the said scheme and along with his application deposited Rs.1,000/- with the Improvement Trust. After waiting for an inordinately long time, and apparently being unsuccessful in the draw of lots, the complainant again applied for a plot under a new scheme of the Improvement Trust known as ‘Raj Guru Nagar’ but he was unsuccessful in getting the plot by draw of lots. Getting no response from the Improvement Trust, the complainant ultimately knocked at the doors of the District Forum, Ludhiana, seeking allotment of the plot from the Opposite Party.

3. Notices having been issued to the Opposite Party, it filed a reply resisting the complaint on a preliminary objection and also on merits. The preliminary objection taken was that the Improvement Trust is a statutory body and hence not amenable to the jurisdiction of the Forum. Another facet of the same objection was that the complainant is not a ‘consumer’ under the Act. The District Forum upheld the preliminary objection raised by the opposite Party, and dismissed the complaint. Hence the appeal.

4. The complainant has strenuously urged that the District Forum has misconstrued the dictum laid down by the National Commission in case U.P. Avas Evam Vikas Parishad v. Garima Shukla, I (1991) CPJ 1, and has gravely erred while holding that he is not a ‘Consumer’ under the Act. On the other hand, the learned Counsel for the opposite party-respondent has reiterated the arguments before us that the Improvement Trust is a statutory body and hence not amenable to the jurisdiction of the Forum and the complainant is not a ‘consumer’ under the Act. We regret our inability to accept this contention of the learned counsel.

The definition of the word ‘Consumer’ as given in the Act under Section 2(1)(d)(ii) is as follows:-

“(d)”Consumer” means any person who,—

(ii) hires 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 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.”

From the above definition it is evident that if any person hires services for a consideration partly paid and partly promised, he becomes a consumer.

The word ‘service’ has been defined in Section 2(1)(o) of the Act, which reads as follows:

“(o)”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, entertainment, amusement or the purveying a news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.”

The definition of the word ‘service’ is not exhaustive but illustrative. Any kind of service rendered or to be rendered by a person to another, may amount to service. In the instant case, the opposite party-respondent has mentioned in the brochure that the purchasers would be provided with all the facilities and the complainant, in view of the assurance given by the opposite party, had applied for a plot. It has been held in U.P. Avas Evam Vikas Parishad v. Garima Shukla and Others (supra) that the
Housing and Development Board was engaged in serving the public in the matter of providing housing by acquisition of land, development of sites, construction of houses thereon and allotment of plots/houses to the public. The Board was clearly engaged in rendering service in consideration to the public and, therefore, those who were allotted plots/houses from the Board, were clearly consumers falling within the definition of Section 2(1)(d)(ii) of the Act. It is further observed that under Section 2(1)(o) of the Act, the definition of the term 'Service' is very comprehensive. It means service of any description including banking, financing, transport, supply of electrical or other energy, entertainment etc. It is further observed that this leaves no ground for doubt that the type of service which the Board rendered to the public for consideration was covered by Section 2(1)(o). The above observations are fully applicable to the present case.

5. The argument that the complainant is just an applicant for a plot and, therefore, he is not a 'consumer' under the Act, is fallacious. It is not necessary that only those who buy goods fall within the definition of consumer but all those who utilise any service, which has been paid or promised or partly paid or partly promised or under any system of deferred payment, are also consumers, as defined under the Act. The complainant who had applied for the allotment of plot, had deposited Rs.1,000/- on account of advance payment and he certainly falls under the definition of 'consumer'. In the circumstances, we are unable to uphold the view expressed by the District Forum that the complainant-appellant, who is an applicant for the allotment of plot, is not a consumer and he is not entitled to seek redressal from the District Forum under the Act.

6. Once it is held so, the conclusion arrived at by the District Forum in the order under appeal has to be reversed. The appeal has, therefore, to be allowed. As already noticed, the District Forum has dismissed the complaint on the preliminary ground that the complainant was not a consumer and, therefore, had not adjudicated on the facts at all. Consequently, the matter is now remanded back to the District Forum for trial of the complaint on merits in accordance with law.

In the circumstances of the case, we make no order as to costs. Appeal allowed.

II (1993) CPJ 1147

WEST BENGAL STATE CONSUMER DISPUTES REDRESSAL COMMISSION, CALCUTTA

Present : Hon'ble Mrs. Justice Jyotirmoyee Nag, President; Prof. Sunil Kanit Kar, Member; Mrs. S. Dutta, Member

NISHITH KUMAR CHATTERJEE —Complainant
versus
BHASKAR MUKHERJEE —Opposite Party

S.C. Case No. 909 of 1992—Decided on 8-6-1993

(i) Consumer Protection Act, 1986—Section 2(1)(g)—Deficiency—Housing—Complainant entered into agreement with O.P. for purpose of flat—Flat not delivered in time—Complaint—Whether failure of delivering flat in time amounts to deficiency? (Yes).

Held: As per condition of second agreement the opposite party ought to have delivered possession of the flat by March 1991 and due to failure and commission on the part of the opposite party to deliver flat within March 1991 which is definitely deficiency in service as per provisions of Consumer Protection Act, 1986.

(Para 5)

(ii) Consumer Protection Act, 1986—Section 14(d)—Compensation—Housing—Flat not delivered in time—Complaint—Compensation of Rs. 10,000/- granted for harassment and mental agony.

Held: We also award the sum of Rs. 10,000/- as compensation on account of harassment, mental agony and torture suffered by the complainant due to failure of the respondent in handing over possession inspite of full payment was made for the flat.

(Para 11)

Result: Complaint allowed.

Cases referred:
3.1 (1992) CPJ 64.

Counsel for the Parties:
For the Complainant : Mr. Pankaj Bakshi, Advocate.
For the Opposite Party: Mr. Prasanta Guha Roy and Mr. Sujit Kr. Maity, Advocates.

ORDER

Prof. Sunil Kanti Kar, Member—The fact of the case is that the complainant paid Rs. 1,10,000/- on various dates for purchase of a flat as per first agreement for sale at a price of Rs. 1,50,000/- and the said flat was scheduled to be delivered by February 1989. It also appears that the deposits of the instalments on account of the said flat were made beyond February 1989. But the complainant finding no progress of the construction of the apartment cancelled the first agreement for sale and desired to get refund of his deposit of Rs. 2,10,000/- but only received Rs. 4,000/- on account of interest. As the petitioner could not recover his money he entered into a fresh agreement for purchase of a flat on 2nd floor of the same building at premises No. 239, Santosh Roy Road, Behala at and for a price of Rs. 80,000/-. By the 2nd agreement the possession of the flat was agreed to be delivered by March 1991 and it was agreed by the opposite party the excess deposit of Rs. 30,000/- and to that effect opposite party issued 3 cheques once dated 21-1-90 for Rs. 10,000/- another dated 7-4-91 for Rs. 10,000/- and the order dated 10-5-91 for Rs. 5,000/- which bounced upon presentation of those cheques with the remark "refer to the drawer". The petitioner has claimed Rs. 1,80,700/- on various heads as stated in the petition of complaint apart from delivery of flat in question under Sale Agreement.

2. The defence case is that the claim of the complainant is without jurisdiction in-as-much as the provisions under Section 2(1)(i)(ii)(f)(g) of the Consumer Protection Act are not applicable. It is admitted by the opposite party that petitioner made advance for a ground floor flat under a Sale Agreement in August 1988 but that contractual relationship never entitled the complainant to be a consumer. The said contractual agreement enjoins responsibility upon opposite party for construction and cannot come under purview of the Consumer Protection Act and on this count the opposite party has referred to a decision in the case of Vinodini Bajpai v. Rajya Krishi Upadan Mandi Parisad reported in I (1991) CPJ 169 (NC). It is also contended that the complainant by his letter dated 6-9-89 cancelled the first agreement for sale and entered into a second agreement for sale of a flat on the ground floor at 239, Santosh Roy Road at a price of Rs. 80,000/-. It is contended that the complainant failed to pay the instalments as per agreement for which the opposite party had written several letters. It is also averred that he has received money from the complainant but not the same amount as stated in Paragraph 5 of the petitioner of complaint and that the opposite party had good intention for which he paid Rs. 4,000/- as interest and he is fighting to raise capital and arranging for all infrastructures for construction of the building and his target is getting set back due to increase in the price of raw materials. The opposite party also contended that the complainant had to take resort under Section 138 of N.I. Act for bouncing of the cheques and without doing so the complainant has lost all grounds and scope to institute cases as the legal proceeding is barred by in action and time limit under Section 138 of N.I. Act and suggested either to take refund of the monies so paid by the complainant or to pay escalation charges for the flat for the gap of 3 years and the excess amount of money has been spent as the construction continued beyond the stipulated time and in view of Clause ‘C’ in the agreement for sale dated 9-8-88 that the additional price has to be paid by the complainant at the command of the promoter opposite party and in support of his contention opposite party has cited a decision reported in A 1989 SC 1034.

JUDGMENT

3. It is admitted by the opposite party receipt of the sum of Rs. 1,10,000/- as advance for sale of a flat by virtue of an sale agreement dated 9-8-88 and for a price of Rs. 1,50,000/-. The instalments paid by the complainant were beyond the schedule time as per agreement and the entire consideration money of Rs. 1,50,000/- was never paid by the complainant. Consequently both the parties have thrown muds towards each other for non-performance of their respective part of obligation arising out of the first agreement dated 9-8-88 and in aforesaid circumstances the agreement dated 9-8-88 was cancelled by the complainant by his letter dated 6-9-89.

4. But subsequently the complainant executed a second agreement for sale with the opposite party
for purchase of a smaller second floor flat at and for a price of Rs. 80,000/- although the opposite party has contended that a Ground Floor Flat was agreed to be sold to the complainant. It is noted that although the second agreement was executed after first agreement being cancelled by letter dated 6-9-89 of the complainant the date of execution of second agreement for sale is likely to be made after 6-9-89 but the copy of the second agreement for sale is also dated 9-8-88 wherein the date of delivery of possession of the flat has been incorporated on or about March, 1991.

5. So if we take up the month of March 1991 is the turning point of our discussion the matter shall be easier to deal with. Admittedly in the second agreement there is no clause for payment of escalation charges and in the said agreement the question of installment payment for the price of the flat also does not arise in view of the fact that there is already excess payment of Rs. 30,000/- than the price of the flat of Rs. 80,000/-. It is also admitted that the excess payment of Rs. 30,000/- was returned to the complainant by 3 cheques dated 21-1-90, 7-4-91 and 10-4-91 which were all dishonoured by the Bank of the opposite party due to non-availability of funds. As per condition of second agreement the opposite party ought to have delivered possession of the flat by March 1991 and due to failure and commission on the part of the opposite party to deliver flat within March 1991 which is definitely deficiency in service as per provisions of Consumer Protection Act, 1986 by way of violation of the contractual obligation arising out of the second agreement for sale thus enjoins liability upon the opposite party for payment of interest and compensation to the complainant. The decisions in the case of A. P. Housing Board v. S.K. Ahluwalia reported in 1992 (1) CPJ 64 and of M. K. Gupta v. Lucknow Development Authority reported in the same volume of CPJ at page 66 both the judgments delivered by the National Commission fully supports the case of the complainant. As per principles laid down in those cases this Commission has absolute power and full jurisdiction to entertain this dispute.

6. On the other hand the decisions cited by the opposite party once the case of Mrs. Vinodini Bajpai v. Rajya Krishi Upasand Mandi Parishad reported in 1(1991) CPJ 169 (NC) and the other case reported in A. 1989 SC 1034 have no nexus with the present case. In the said two cases the disputes were between the Promoter and the Contractor for construction of the building. In the former case National Commission held that the said dispute was for settlement of accounts and payment thereof of a construction of a building by a contractor. Similarly the decision reported in A. 1989 SC 1034 it has decided that in view of clause for payment of escalation charges in the agreement between the Promoter and Contractor the escalation charges of full consideration in advance by the opposite party. So the ratio of those decisions do not apply in the present case in-as-much as that here the relationship of the complainant and the opposite party, is that of a buyer and Promoter for purchase of a flat for consideration which is fully paid in advance even leaving a balance of Rs. 30,000/- refundable to the complainant by the opposite party.

7. We do not agree with the view of the opposite party that as the complainant has not taken steps under Section 138 of N.I. Act after bouncing the cheques of the refund money, he is barred to agitate his grievance before this Commission and that claim of refund of Rs. 30,000/- is barred by limitation. With regard to dispute of delivery of Second Floor Flat and Ground Floor Flat, by careful scrutiny of the agreement we are of opinion that the agreement was for 2nd floor flat.

8. In the light of aforesaid discussion we hold that the complainant is entitled to get the delivery of possession of a flat at once forthwith to the refund of Rs. 30,000/- paid in excess of consideration money of Rs. 80,000/- for the flat and interest @ 18% per annum on Rs. 1,10,000/- from April 1991 until delivery of the flat to the complainant and to compensation on account of harassment, mental agony and torture suffered by the complainant due to failure of the opposite party in handing over possession after full payment was made.

9. So we direct the opposite party to handover possession of a flat in the 2nd floor of the building complete in all respects as per agreement and to refund the sum of Rs. 30,000/- to the complainant.
Complaint allowed.
well. On the 11th of July, 1991 he made an application to the respondent HUDA for permission to transfer the said house to the appellants which was granted on the 23rd of July, 1991 subject to the necessary conditions. The relevant Affidavit and Indemnity Bonds were also submitted and he further executed a Sale Deed in favour of the complainants at Delhi on the 25th of July, 1991.

3. Subsequently the said house was re-allotted to the appellants by the respondent HUDA on their compliance with the necessary conditions of executing an Affidavit and Indemnity Bond. The appellants thereafter submitted a revised plan for raising new additional construction on the said plot and were thereafter issued a notice to pay an extension fee of Rs. 17269.85 in all as the pre-condition for such sanction. The appellant’s challenged the demand of the extension fee primarily on the ground that the same was liable to be paid by the original allottee Sh. Lakhmi Chand Gogia and not by them.

4. In the reply filed by the respondent it was stressed that the appellants had duly filed attested Affidavits, a undertaking to pay the amount and any further liability towards the said plot, and also executed Indemnity Bond in the same terms. It was the case that on calculation it was found that an amount of Rs. 5703/- was due from Sh. Lakhmi Chand Gogia during 1990 and further amount of Rs. 11560/- was due for the year 1991 which had to be paid. The stand was that the building plan could be sanctioned only after due payment of extension fee.

5. The District Forum noticed that the appellants had filed their Affidavits and Indemnity Bond wherein it was clearly mentioned that they would be liable to make the payment of all outstanding dues against the said plot at any stage. It was noticed that this position was not in dispute and consequently it was concluded that the demand for the amount of extension fee was justifiable. Inevitably, the complaint was dismissed.

6. Mr. R.K. Jain, the learned Counsel for the appellant faced with the up-hill task of assailing the order under appeal had with considerable vehemence and erudition projected his client’s case. Resting himself primarily on the communication of the Estate Officer, HUDA, dated 23rd of July, 1991 addressed to Shri Lakhmi Chand Gogia, Counsel submitted that this did not in terms mention any outstanding extension fee. On that premises, it was the case that the respondent-HUDA was now estopped from claiming any extension fee from the appellants. In any case the stand was that the same would be payable by the said Shri L.C. Gogia only. Basic reliance was placed on the well known case on promissory estoppel 1979 Supreme Court 621 "M/s. Motilal Padampat Sugar Mills Co. Ltd. v. The State of Uttar Pradesh and Others.

7. Despite the ability with which a crumbling case had been presented, we are unable to find any merit in the aforesaid plea. What merits pointed attention is the conceded fact that on the very same date of the 23rd of July, 1993, the appellants had in no uncertain terms submitted an affidavit wherein paragraph 2 was in the following terms:

“That we further undertake to make payment of all the outstanding dues or such amount as may be due or become liable due against this plot at any later stage.”

8. It bears repetition that apart from the aforesaid categoric undertaking, the appellants filed an Indemnity Bonds in similar terms also executed by the transferor and the transferee of the plot. Once that is so, it appears somewhat plain that the appellants now cannot wriggle out of the clear undertaking unreservedly and voluntarily given by them on the basis of the specious plea of promissory estoppel. Indeed it appears to us that such an argument would boom-rang on the appellants because having given the affidavit and executed the necessary documents, they are now estopped from pleading anything contrary to their own deed and signatures.

9. The alternative plea of the learned Counsel for the appellants that their predecessor-in-interest Shri L.C. Gogia alone would be liable is equally untenable. Once it is held that Shri Gogia was to be rightfully levied with extension fee, the appellants cannot possibly claim a title better than their predecessor-in-interest. It is well settled that a transferee would stand in the transferor’s shoes and in the context of a clear undertaking given to that effect, he would be equally liable for the dues of his transferor. It is somewhat elementary that nobody
can derive a better or superior title than the original holder.

10. Yet again, it is common ground herein that the appellants had secured the transfer of valuable property in their favour on the basis of the executed sale deed and the re-allotment in their favour on the basis of the Affidavits and Indemnity Bonds clearly taking over all liabilities pertaining to the property i.e. the relevant plot. In this situation, it does not lie in the mouth of the appellants that they have benefits of the title to the property, but have no liability with regard thereto. It is axiomatic that the benefit and the burden of a transaction always goes together.

11. In all fairness, one must also notice the spirited reply and the plea of Miss Deppa Puri on behalf of the respondent. It was forcefully pointed out that extension fee is payable from year to year and becomes leviable from the month of January of each year. It was forcefully submitted that the liability for the extension fee fell directly on the appellants also because of non-completion of the construction on the plot which was a basic requirement of the terms and conditions under which it was transferred. Equally, it was pointed out that some inadvertence or a clerical error in not mentioning the extension fee for each particular year with regard to the predecessor-in-interest of the appellants would be no bar at all against its recovery on the admitted undertaking given by the appellants. It bears repetition that the appellants had undertaken not only to pay outstanding dues, but also any amount as may be due or may become due in the future with regard to the plot in question at any later stage.

12. For the fore-going reasons, the appeal must fail and is hereby dismissed. However, we refrain from burdening the consumer-appellant with any costs.

Appeal dismissed.
people who can afford to pay the full cost of houses during the construction period. A brochure to that effect was published by Opposite party where it was stated that costs of Duplex-A type category houses over an area of 3,000 square feet land with ground floor construction of 1157.8 square feet and 1st floor construction of 438.7 square feet would cost of Rs. 2,20,000/- which would include cost of land and development cost of infrastructure. Complainant who is an employee in Utkal Machineries, Kanabahal, desirous of owning a house at Bhubaneswar, filed an application in June, 1986 for such house along with an amount of Rs. 10,000/- as required by Opposite Party. When complainant could not get any information about the result of her application, she sent reminder on 20th January, 1987 and 29th June, 1987. In the second reminder she stated that she came to know from reliable source that allotment has been done and her name in the first position in the waiting list has come down. She and her husband personally met or made communications to various officers of the Housing Board at different times. On 30th January, 1988 she came to learn from private sources that her application was in second position in the waiting list and 2 more houses are going to be constructed as decided by the Board with anxiety to have a roof for her. On 22.8.1988 she filed another application with deposit of Rs. 20,000/- for allotment of a house to be constructed in Jagmura Complex. That day however, her application offering for a house in Baramunda Complex under Self financing scheme was accepted by intimating that a house in M.I.G. Duplex-A type for which she applied, has been allotted to her provisionally. Condition of payment, amongst others was mentioned in the letter of allotment. On receipt of the letter of allotment, on 29.8.88 she requested to cancel the application for Jagmura allotment of house in Complex and to divert the amount of Rs. 20,000/- deposited along with that application, towards the first instalment payment of Baramunda house allotted. On 27.9.88 the ‘A’ type Duplex house bearing No. A-43 was finally allotted in her favour. On 4.12.89 she was intimated that there is default in payment in the 3rd instalment which she was called upon to pay by 31st December, 1989. Since 2237 square feet land adjoining to her plot was to be transferred in her favour, she was called upon to deposit Rs. 16,555/- more on that account. Complainant addressed a letter on 13.12.89 stating that information relating to default is not correct since she had paid the same. She had apprehension that the fittings, windows and doors etc. would be destroyed in case possession of the house is not given to her early. When she did not get possession, she made some correspondences and thereafter addressed a letter to this Commissioner on 17.4.1991 requesting intervention of the President. On 30.4.91 she sent another letter to the Commissioner which was received on 4.5.91 on basis of which this Dispute case was registered. After preparing copies notice was sent to Opposite Party on 21.6.1991 by registered post with postal acknowledgement when such postal acknowledgements were not received back even after 30 days of despatch, notices were accepted to be sufficient.

3. On 5.9.1991 opposite parties intimated complainant that she is to pay Rs. 14,630/- towards the development cost of the additional area of 1937 square feet which is adjacent to her house No. A-43. Complainant made a grievance of the same on 12.9.1991. She was reminded of the same on 14.10.1991 and was requested to take over possession on deposit of the same. On her depositing the amount on 18.11.1991, letter authorising to take possession on 20.12.1991 was issued on 2.12.1991 and she has taken possession of the house in month of March, 1991.

4. Opposite Party stated its case indicating the same is shape of memorandum that on 4.12.89 complainant was called upon to pay Rs. 60,555/- as costs of the land (@ Rs. 3.21 lakhs per acre) in view of the larger area given her. This amount was deposited on 11.4.90, after which the sale deed for the extra land was executed. At that stage grievance was made before the State Public Undertaking Committee relating to allotment bigger size plats. Thereafter, Chairman of Opposite parties passed an order that the extra land would be charged at Rs. 6.50 lakhs per acre. On that basis, complainant was intimated to deposit the balance amount of Rs. 14,630/- and was reminded on 14.10.1991 to deposit the amount and take over physical possession. On 18.11.91 this amount was deposited, whereas after possession letter was issued on 2.12.1991 to take possession on 20th December, 1991. On 17.3.1991,
Assistant Engineer sent a note that possession had already been delivered to her.

5. For the aforesaid narration of facts it is seen that delay in delivery of possession, extra costs and charge of interest are the grievances of the complainant. For considering if there is deficiency in service, each of the points require careful consideration.

Delay in delivery of possession

6. It is not disputed that while advertising the scheme it was indicated that the period of construction would be 2 years. Scheme is that the construction is intended to be financed by the allottee. These two years in respect of a house should therefore, be from the date of allotment of a house to an applicant and receipt of first instalment and not from the date of advertisement or date of application. In this case, provisional allotment was on 22.8.1988. Therefore, normally the construction as per the time fixed should be near about 22.8.1990. Land was transferred by registration on 12.4.1990. Complainant does not dispute that house had been constructed by 15.1.1990. Therefore, it cannot be said that there was delay in construction. Possession could have been delivered on 12.4.1990. Such possession was, however, delayed by about two years since it was delivered in the month of March, 1992. This delay is explained by opposite parties to be on account of objection before the State Public Undertaking Committee in respect of excess area than the area of 3,000 square feet. In case complainant would have intimated that she is willing to confine her land area to 3000 square feet and not more, possibly there would have been no explanation for the opposite Parties. Opposite Parties ought to have intimated the complainant that in case she would like to take possession of the house allotted to her with excess area, she shall have to wait till the objection before the Public Undertaking Committee is finalised. We cannot appreciate silence of the opposite parties. Having received huge amounts from allottees, they ought not to have behaved to be in a superior position expecting allottees to approach them time and again. Officers of Opposite Party No. 1 should change their attitude in behaviour with on allottee for whom they exist and are paid for. Equally, complainant ought not to have approached the officers times without number when forums are available for redressal. These uncalled for approaches to get preference than others create a situation for favouritism, corruption and arbitrariness. If persons, highly educated and well placed in life, in anxiety to get matters expedited, approach officers, the ill effect of the same would be reflected on persons who are not able to approach and the system itself would be soiled. So that as it may, delay was on account of objection before, Public Undertaking Committee and it was a force majeure in the circumstances of the case. No sooner Chairman decided that the price would be 6.50 lakhs, action was taken. Complainant getting excess area stands in better position than other allottees who have not be able to get excess area which caused the delay and accordingly, we are not able to attribute deficiency in service on account of delay in delivery of possession.

7. Extra cost: Extra cost for land is not unjustified when Government rate was 6.5 lakh rupees, there was no justification for the Opposite Party to charge rate of 3.21 lakhs rupees. There is no doubt some extra cost for construction. The same however, is not so abnormal to be said to be arbitrary. In a house under the self financing schemes, the finance required for construction is to be borne by the allottee. If the Opposite Parties would have been the seller of the house with land registration charges would have been much more. Getting advantage of registration charges, an allottee should not be permitted to say that the cost of construction has increased. In any case, if there is breach of agency, the same can be agitated in usual forum and not being a deficiency in service, redressal agency is not to entertain it unless the same is ancillary for considering other deficiencies having effect on use of the service hired.

8. Interest: Complainant has a legitimate grievance in respect of collection of interest on account of deprivities of hard earned money temporarily without any benefit. Payment of interest on account of default in payment of instalment is a term of agreement. This cannot be a grievance when there is admittedly some default, be it a day or months. Advance payment of subsequent instalments would not be a ground to avoid paying interest. However, on account of delay in delivery of possession, complainant not having been able to enjoy
fruits of her investment, even when she has completed her part of the agreement, she is entitled to compensation. Since complainant is serving outside Bhubaneswar and does not claim that her dependents and family members would have used the house for which she or they suffered inconvenience or had to pay more at Bhubaneswar. Therefore, we are inclined to direct payment of compensation equal to the interest collected from her. Interest collected is found to be Rs. 7,512/. Opposite Parties are directed to pay Rs. 7,512/- to complainant as compensation within two months from the date of receipt of this order failing which the same shall carry interest at the rate of 12 1/2% annually till the date of payment.

9. Complainant, in course of hearing alleged defects in the house and inconvenience in enjoyment of the same. She is given liberty to make her grievance independently in a separate complaint in appropriate forum if so advised.

10. Claim for compensation on account of frequent journey to Bhubaneswar and loss of emoluments on that account is not entertainable since opposite parties never invited her and she had come for her own satisfaction.

11. Complaint is allowed to the extent indicated in para 8 and is ordered accordingly.

Complaint allowed.

Result: Complaint allowed.

Counsel for the Parties:
For the Complainant: Mr. D.D. Gupta, Agent.
For the Opposite Party: Mr. Arun Vohra, Advocate.
KARNATAKA STATE CONSUMER DISPUTES REDRESSAL COMMISSION, BANGALORE

Present: Hon'ble Mr. Justice R.G. Desai, President; Mr. K.R. Ramaswamy Iyengar, Member.

B.V. JAGANNATHA
—Appellant/Complainant

versus

HOUSING COMMISSIONER, KARNATAKA HOUSING BOARD & ORS.
—Respondents/Opposite Parties

Appeal No. 96 of 1991—Decided on 11.11.1991

Karnataka Housing Board Regulations, 1983 — Regulations 12(3) & (4) — “Housing” — “Registration Fee”. — Complainant allotted flat — Paid Registration Fee — Complainant requested for cancellation — Registration Fee forfeited — Complaint filed. — District Forum dismissed — Hence appeal — Whether forfeiture of 25% of Registration Fee is proper — (Yes).

Hold: According to Regulation 12(3) and (4) of the Karnataka Housing Board Regulations, 1983, if the allotment is cancelled then the Respondent is given right to forfeit 25% of the Registration Fee. Therefore, the Respondent is justified in deducting 25% of the Registration Fee. Hence, the order passed by the District Forum, Shimoga, is proper.

In the Result, the Appeal is dismissed. No costs.

Appeal dismissed.

ORDER

Mr. Justice R.G. Desai, President — Appellant called and found to be absent. Heard Respondent’s Counsel and perused the records.

2. The Appellant was allotted a L.I.G. House No. 144-II at Gopala, in Shimoga in the draw for the allotment held on 27.5.1989 on the basis of his application for allotment of the same. He paid Registration Fee of Rs. 1,000/- on 15.4.1989 along with his application for an allotment of a L.I.G. House at Gopala in Shimoga. The Appellant by his letter dated 26.6.1989, requested the Respondent not to allot the house. Hence the allotment was cancelled and 25% of the Registration Fee was forfeited and the balance amount was refunded to him. Hence he filed a complaint before the District Forum, Shimoga, for a direction to the Respondent to refund the whole of the Registration Fee to allot the house to him at the notified rate. On hearing the parties, the District Forum, Shimoga, dismissed the complaint. Hence this Appeal by the Appellant.

3. In the advertisement itself, the Respondent had stated that the provisional cost of the house is Rs. 40,000/- and it was subject to upward revision based on the actual expenditure. It is not disputed that after completion of the house the provisional cost was fixed at Rs. 65,000/-. Hence the Complainant’s demand that the house should be allotted to him at the old rate of Rs. 40,000/- cannot be conceded.

4. According to Regulation 12(3) and (4) of the Karnataka Housing Board Regulations, 1983, if the allotment is cancelled then the Respondent is given right to forfeit 25% of the Registration Fee. Therefore, the Respondent is justified in deducting 25% of the Registration Fee. Hence, the order passed by the District Forum, Shimoga, is proper.

In the Result, the Appeal is dismissed. No costs.

Appeal dismissed.
HARYANA STATE CONSUMER DISPUTES REDRESSAL COMMISSION, CHANDIGARH

Present: Hon'ble Mr. Justice S.S. Sandhawalia, President; Mr. S. Kulwant Singh, Member.

RAM NIWAS MANAV LECTURER —Appellant/Complainant

versus

HUDA —Respondent/Opposite Party


Held: The appellant very fairly conceded in the first instance that he was not the original owner of the plot allotted out by the HUDA. It was his own case that he had purchased the same in a subsequent re-sale. This would make it somewhat doubtful whether the appellant would be a consumer in strictiude qua the respondent-HUDA. (Para 7)

Result: Appeal dismissed.

ORDER

Mr. Justice S.S. Sandhawalia, President — This appeal is directed against the order of the District Forum, Hisar declining to entertain the complaint preferred by the appellant.

2. The complainant had averred that he was the holder of plot number 706 measuring 100 Sq. meters in Sector 13 of the Haryana Urban Development Authority complex at Hisar. It was the case that the possession was duly delivered to him on the 7th of March, 1991 and thereafter he had submitted a site-plan for the construction of a house therein along with a ‘No Due Certificate’ for approval. However, this was returned back on the 12th of June, 1991 for want of “standard zoning of plots”. Thereafter the said plans were re-submitted but were returned again on the old ground and it was not till the 24th of October, 1991 these were finally sanctioned.

3. It was further the case that the complainant had applied for the execution of a conveyance deed and deposited non-judicial stamp paper worth rupees 2,093/- but these were also returned on the 6th of February, 1992 by the respondent on the ground that the enhanced cost of Rs. 21,196.68 paise should be deposited as a condition precedent to execute the aforesaid deed. Allegations of unfair discrimination and malafides were levelled against the respondent and a compensation to the tune of Rs. One lac was claimed.

4. On notice being issued the respondents HUDA took up the plea that the appellant had not submitted the complete plan papers to them, and consequently the same could not be approved. Equally the necessity of the full payment of the enhanced cost before executing the conveyance deed was reiterated.

5. The District Forum in its short order noticed that there was a dispute about the payment of Rs. 21,196.68 paise towards the enhanced price of this plot. Specifically it was recorded that the complainant-appellant had conceded before the District Forum that this dispute was already pending in the Civil Court. Patently finding that the matter was either wholly or partially sub-judice, the District Forum exercised its discretion of not entertaining the complaint on this ground.

6. The appellant who projected his appeal in person with considerable persistence, first highlighted the fact that he had not individually instituted a suit in the Civil Court himself. Consequently it was argued that the District Forum was not justified in non-suiting the appellant at the very threshold.

7. We are unable to find much merit in the aforesaid submission despite the vehemence with which it has been pressed. The appellant very fairly conceded in the first instance that he was not the
original owner of the plot allotted out by the HUDA. It was his own case that he had purchased the same in a subsequent re-sale. This would make it somewhat doubtful whether the appellant would be a consumer in strictitude qua the respondent-HUDA. Apart from this, Mr. Ram Niwas admitted that there was a representative body styled as submission of the appellant must therefore, fail equally.

9. For the foregoing reasons, this appeal fails and is hereby dismissed. We however, decline to burden, the appellant with any costs since no appearance has been put in on behalf of the respondents.

Appeal dismissed.

II (1993) CPJ 1055

MAHARASHTRA STATE CONSUMER DISPUTES REDRESSAL COMMISSION, BOMBAY

Present : Hon'ble Mr. Justice G.G. Loney, President; Mr. M.G. Gavai, Member; Smt. Ellen Dharkar, Member

K.G. MANDAOKAR —Complainant

versus

M/s. KETAN CONSULTANTS PVT. LTD. —Opposite Party

Complaint No. 150 of 1991—Decided on 7-4-1992

Consumer Protection Act, 1986—Section 2(d)—Consumer—Section 2(e)—Deficiency in Service—Builder—Complainant hired services of O.P. for construction of flat—Paid Rs. 1,22,000/-—Possession not given—Complaint filed—Seeking possession of flat or refund of amount—Whether complainant a consumer ? (Yes)—Whether entitled for relief claimed ? (Yes).

Held : It is an admitted fact that the complainant had entered into an agreement with the opposite party on 8.2.1990. The copy of the agreement clearly shows that the aforesaid agreement was linked with another agreement dated 9.9.1988 in which the opposite party had agreed to develop the land in question at Nagpur for construction of flats. The agreement further shows that complainant had agreed to purchase apartment No. GB-3 on the ground floor of which the entire construction work was entrusted to opposite party. The estimated value of the construction of the flat is mentioned at Rs. 1,35,500/-. The stipulation about the payment is shown in para 1 of the agreement. The possession was to be handed over to complainant within 18 months from the commencement of the work. Thus, it is clear that the opposite party had volunteered to render the service of construction of a flat for the complainant as per the agreement. The contents of the agreement clearly show that the opposite party agreed to render necessary service for the construction of flat for complainant. In view of the decision of National Commission in the case of U.P. Awas Evam Vikas Parishad v. Garima Shukla, the activity in which opposite party is engaged clearly clothes the complainant with the status of a consumer. Thus, the complainant is a consumer within the meaning of Section 2(d) of the Consumer Protection Act. We find that the complainant has demonstrated that the opposite party had received a consideration of Rs. 1,22,000/- and, therefore, the termination of the agreement unilaterally amounts to the breach of the conditions of the agreement. As it is an admitted fact that the opposite party had agreed to render the service to the complainant for construction of flat in pursuance of the agreement placed on record. In our view, issuing the notice purporting to terminate the contract is a short-coming in the manner of performance of the contract under which the opposite party has undertaken to perform in pursuance of contract. The delay in placing the complainant in possession is also a deficiency in the manner of performance which the opposite party had agreed. We, therefore, are of the view that the complainant has proved his allegations regarding the deficiency in the performance of the contract of service by the opposite party and, therefore, the complainant is entitled to claim the reliefs of possession or in the alternative the return of the amount.

(Paras 3 & 5)
Result: Complaint allowed with costs.

Case referred:

Counsel for the Parties:
For the Complainant: Mrs. Padolay, Advocate.
For the Opposite Party: Mr. Patwara, Advocate.

ORDER

Mr. Justice G.G. Loney, President—This is a complaint in which the complainant alleged the deficiency in the service of the opposite party viz., the builder. Shortly stated, the facts are that the complainant entered into an agreement with the opposite party on 8.2.1990 to hire the services for construction of a flat at Nagpur for a consideration of Rs. 2,05,000/-. The complainant alleges that he was living as a tenant in the premises where the flats were to be constructed. The house belonged to Mr. Dilip Deoras. The opposite party is alleged to have entered into a contract with said Deoras on 9.9.1988 for development of the same land. The complainant further alleged that since he was residing on the same land in a tenement as a tenant, the opposite party could not construct the flats unless complainant vacated the tenement. According to complainant, there was again another agreement for vacating his rented premises on 24.1.1989. That agreement is also on record. According to complainant, the opposite party agreed to pay to the complainant Rs. 50,000/- as a consideration for vacating his premises in question so as to enable the opposite to proceed with construction. The complainant further alleged that by the same agreement, the opposite party agreed to sell a flat to the complainant in the said scheme. The complainant further alleged that he paid in cash Rs. 20,000/- at the time of the agreement and, thereafter paid Rs. 52,000/-. The complainant thus alleged that he paid Rs. 1,22,000/- including Rs. 50,000/- for vacating the tenement and the balance could not be paid due to his difficulties. Despite the agreements and payments of Rs. 1,22,000/- explained above, the opposite party on 17.7.1990 send the complainant a notice intimating the cancellation of the agreement in question. The complainant, therefore, filed his complaint alleging that the opposite party who has volunteered to render his services for construction of the flat failed to execute it as per the terms of agreement and unilaterally committed the breach of contract. Complainant approached this Commission claiming the possession of the flat or the alternative refund of Rs. 1,22,000/- with interest at the rate of 18% p.a. In support of his allegations the complainant filed the necessary agreement and other documents. The opposite party filed its written version on 7.10.91 denying the claim of complainant. Internally the opposite party disputed the claim of complainant on the technical grounds that the complainant is not a consumer and consequently not entitled to approach this Commission.

2. We have heard the complainant through Smt. Padolay, Advocate and Opposite Party through Shri Patwara an Advocate. We have gone through the records of the case. The following points arise for our consideration:

   (1) Whether the complainant is a consumer within the meaning of Consumer Protection Act, 1986?

   (2) Whether the complainant hired the services of opposite party and if yes, was there any deficiency in the service of the opposite party?

   (3) Whether the complainant is entitled for reliefs claimed in the complaint?

   Our answer to the above mentioned points are in the affirmative.

3. As regards the first point, it is an admitted fact that the complainant had entered into an agreement with the opposite party on 8.2.1990. The copy of the agreement clearly shows that the aforesaid agreement was linked with another agreement dated 9.9.1988 in which the opposite party had agreed to develop the land in question at Nagpur for construction of flats. The agreement further shows that complainant had agreed to purchase apartment No. GB-3 on the ground floor of which the entire construction work was entrusted to opposite party. The estimated value of the construction of the flat is mentioned at Rs. 1,35,500/-. The stipulation about the payment is shown in para 1 of the agreement.
The possession was to be handed over to complainant within 18 months from the commencement of the work. Thus, it is clear that the opposite party had volunteered to render the service of construction of a flat for the complainant as per the agreement. The contents of the agreement clearly show that the opposite party agreed to render necessary service for the construction of flat for complainant. In view of the decision of National Commission in the case of U.P. Awas Evam Vikas Parishad v. Garima Shukla, 1(1991) CPJ 1, the activity in which opposite party is engaged clearly clothes the complainant with the status of a consumer. Thus, the complainant is a consumer within the meaning of Section 2(d) of the Consumer Protection Act. It is further stated by the complainant that the construction of the flat commenced in the month of May, 1989 and completed in the month of July, 1990.

4. The opposite party stated that the complainant had failed to make the balance payment and, therefore, the complainant was not entitled for the possession of the flat. The opposite party also disputed that Rs. 50,000/- were to be paid to the complainant for vacating his tenement. It is found from the agreement dated 24.1.1989 which is placed on record between the landholder and the complainant that the complainant was to receive Rs. 50,000/- for vacating the premises in his possession as a tenant which would be adjusted towards the cost of the flat in question. But there is no separate receipt for Rs. 50,000/-. Similarly, we find in agreement dated 8.2.1990 between the landholder G. Puranik and the complainant at page 4 that Rs. 20,000/- is paid by the complainant at the time of the execution of the agreement and no separate receipt is passed for that purpose. Thus, we find that Rs. 70,000/- had been paid by the complainant towards the consideration the flat as is reflected in the aforesaid two agreements which are admitted documents. In addition to above, one complainant has alleged that he has paid Rs. 24,000/- (? eligible). The complainant has filed on record the copies of the original receipts for the aforesaid payments which are marked to document No. 5, 5-A and 5-B, respectively. The aforesaid payment of Rs. 52,000/- is supported by the three receipts. Thus, we find that the complainant has made a total payment of Rs. 1,22,600/- against the total price of the flat Rs. 2,05,000/-. From the aforesaid facts it is abundantly evident that the complainant had hired the services of the opposite party for the construction of a flat and had accepted Rs. 1,22,000/- towards the consideration and, therefore, the complainant is a consumer as he hired the services of opposite party for a consideration. Consequently the complaint is maintainable before this Commission.

5. From the preceding paragraphs, it is fully established that the complainant had hired the services of the opposite party for the construction of his flat. The stipulation in para 5 of the agreement shows that the flat was to be made available for complainant's occupation within 18 months from the date of commencement of the work. The work is stated to have been commenced in 1989. In any case, the period of 18 months has ended long back. In the notice, the opposite party has agreed that complainant has paid Rs. 52,000/-. Opposite Party, however, had omitted to mention the amount of Rs. 50,000/- and Rs. 20,000/- received by him towards the consideration as discussed in the previous paragraphs. On consideration of the facts which are clearly stated by the complainant in this complaint and which are duly supported in his affidavit dated 12.7.1991, it is found that the complainant was a tenant in the premises and that he was promised Rs. 50,000/- for vacating the house to facilitate the opposite party to construct flats on the vacant land. It is also clear from the agreements that the complainant was promised Rs. 50,000/- for his vacating the tenancy and placing the complainant in vacant possession for the construction of the flats. It is also evident that the complainant was to get a flat bearing No. GB-3 on the ground floor in the proposed building at the estimated cost of Rs. 2,05,000/-. The complainant having demonstrated the payment of Rs. 1,22,000/- it was not correct on the part of the opposite party to serve him with a notice showing only receipt of Rs. 52,000/-. It appears that the complainant was being denied the entitlement of the flat taking undue advantage of his arrears for which he has sent letter to opposite party, the copies of which are placed on record explaining his difficulties in not making that payment. However, from the facts and circumstances of this case, we find
that the complainant has demonstrated that the opposite party had received a consideration of Rs. 1,22,000/- and, therefore, the termination of the agreement unilaterally amounts to the breach of the conditions of the agreement. As it is an admitted fact that the opposite party had agreed to render the service to the complainant for construction of flat in pursuance of the agreement placed on record. In our view, issuing the notice purporting to terminate the contract is a short-coming in the manner of performance of the contract under which the opposite party has undertaken to perform in pursuance of contract. The delay in placing the complainant in possession is also a deficiency in the manner of performance which the opposite party had agreed. We, therefore, are of the view that the complainant has proved his allegations regarding the deficiency in the performance of the contract of service by the opposite party and, therefore, the complainant is entitled to claim the reliefs of possession or in the alternative the return of the amount. We further find that the delay is due to the terms of agreement. Shri Patwardhan, the learned Advocate appearing for the opposite party tried to argue that there was no direct contract between the complainant and the opposite party for the development of the land and for the service of construction. It is also agreed that the transaction in question is for commercial purpose and, therefore, the complaint is not maintainable. In our view, the aforesaid contentions raised by Shri Patwardhan are totally untenable taking into consideration the facts of this case. The agreements in question clearly established that O.P. No. 2 was a party to the contract and that the transaction in question cannot be said to be for commercial purpose. Shri Patwardhan further submitted that the complainant was a defaulter and was entitled to pay interest at the rate of 24% p.a. in view of Clause 11 of the agreement dated 8.2.1990. It is true that such a clause exists. Therefore, at the most, the complainant is liable to pay interest at the rate of 24% p.a. balance of Rs. 1,15,08/- from the date of default till the payment. But non-payment of the balance does not in any way disentitle him to claim the possession of the flat. The amount of arrears is negligible and cannot be used as an excuse to deny the complainant possession of flat in question, when major and substantial amount of Rs. 1,22,000/- has been paid. Thus, we find that the claim of the complainant is justified. The complainant is entitled to the possession of the flat in question. Hence, we pass the following order:

ORDER

6. The complainant shall be placed in possession of the flat No. GB-3 on ground floor ivi “Chinnayas Apartments” situated at Nagpur after the payment of Rs. 83,000/- by the complainant with interest at the rate of 24% p.a. from the delayed period of default. The complainant shall make the balance payment within a period of one month from the date of this order and, thereafter, the complainant shall be placed in possession of the flat on the same date by opposite party. If the opposite party fails to place the complainant in possession of the flat, then the opposite party shall pay to the complainant Rs. 1,22,000/- with interest at the rate of 18% p.a. from the date of the payment of the aforesaid amount till realisation and shall also pay Rs. 50,000/- towards compensation for the loss caused to the complainant. The complainant also be paid the cost of Rs. 1,000/-.

Complaint allowed with costs.

MAHARASHTRA STATE CONSUMER DISPUTES REDRESSAL COMMISSION, BOMBAY

Present: Hon’ble Mr. Justice G.G. Loney, President; Smt. Ellen Dharkar, Member.

SANJAY BHASKAR GAWAI —Complainant versus

M/S. ORANGE CITY BUILDERS PVT. LTD. & ORS. —Opposite Parties

Complaint No. 168 of 1991—Decided on 11.11.1992

Consumer Protection Act, 1986 — Compensation — Housing — Complainant entered into an agreement of development of the site for construction of flat for himself — O.P. failed to carry out the incomplete work — Complainant made full payment — Construction by O.P. was sub-standard and not according to specifications — Possession given late — Complaint filed — Compensation of Rs. 32,000/- granted towards
incomplete work and delayed possession.

_Held:_ The complainant has successfully proved that the work of his flat was not completed as per the specification in terms of agreement and that he was required to spend Rs. 28,000/- for completing that work. In view of the claim of complainant that he is required to spend Rs. 28,000/- for completing the construction, he is entitled to claim compensation for the said amount as it is as a result of negligence on the part of opposite party. The complainant also proved that he received the possession late and claimed Rs. 16,000/- on that count. However, for the delay of two months, we grant Rs. 4,000/- as compensation. Having thus proved the complaint on these two counts, we are, therefore, inclined to grant the relief to the complainant for the total amount of Rs. 32,000/- towards incomplete work and delayed possession. We also grant to the complainant the cost of this complaint. (Para 3)

Result: Complaint allowed with costs.

Counsel for the Parties:
For the Complainant: *In person.*
For the Opposite Parties: *Mr. R.V. Deo, Advocate.*

ORDER

Mr. Justice G.G. Loney, President — The complainant has alleged in his complaint that he entered into an agreement of development of the site for construction of flat for himself. According to the complainant, the opposite party No. 1 failed to carry out the incomplete work even though complainant made the full payment. It is also alleged that the construction made by the opposite party was sub-standard and not according to the specifications mentioned in the agreement. In short, the complainant alleged that the services rendered by the opposite parties were deficient in many aspects. The complainant, therefore, claimed Rs. 2,000/- towards the other charges, Rs. 15,000/- for failure to complete the Balconies as per the specifications and Rs. 13,000/- for correcting the sub-standard work. The complainant also claimed loss of interest amounting to Rs. 12,000/- and other losses amounting to Rs. 1,63,500/-. The claim of the complainant was opposed by the opposite parties.

2. We have heard the complainant in person and Opposite Party by Shri R.V. Deo, Advocate.

3. The following are the admitted facts. The ownership document was registered on 27.9.1991. The complainant was handed over the possession of the flat on 23.3.1987. The price was fixed at Rs. 1,55,000/- but Rs. 1,60,000/- were paid by the complainant to the Opposite Party. According to the complainant the following deficiencies were found in the service of the Opposite Party.

(1) The complete construction as per the specification and the plan was not done by the Opposite Party and, therefore, the complainant was required to spend Rs. 2,8000/- to complete that construction as per specifications stated in the agreement.

(2) The complainant claimed refund of Rs. 12000/- which he has paid for electric connection, water connection and towards sales tax. The grievance of the complainant is that only Rs. 2,000/- to Rs. 3,000/- were required for the aforesaid purpose and, therefore, he is entitled to get the refund of Rs. 12,000/-.

(3) The complainant claimed the loss of occupancy due to the delay in handing over the possession and, therefore, claimed Rs. 16,000/-. 

(4) The complainant claimed Rs. 5,000/- for not forming the association by the Opposite Party under the existing law.

(5) The complainant also made a grievance that the extra FSI is being utilised by the Opposite Party although he has a share in the FSI.

(6) Lastly, the complainant has claimed Rs. 2,500/- as cost.

3. In reply, Shri Deo, Advocate has submitted that the agreement is dated 11.7.85 between the parties and the possession was granted to the complainant within 18 months as per the agreement. It is further submitted that the permission was granted for occupancy on 11.7.85 and immediately, the complainant was placed in possession. According to the complainant, he should have been placed in
possession at the end of December, 1987 but he was placed in possession in the month of February, 1988. It, therefore, appears that there was two months delay in handing over the possession. It is also submitted by the Opposite Party that Rs. 7,000/- were spent towards electric and water meter Rs. 2,000/- were required for registration. It is also submitted by the Opposite Party that accounts of expenditure were placed before the meeting of the flat owners society on 18.9.86 and its correctness was not disputed by any of the members.

4. After hearing both the parties, we find that the Opposite Party has delayed in delivering the possession to the complainant and also did not complete the work as per the specifications. Similarly, the complainant suffered loss due to delay in occupying the flat.

5. We find from the arguments of the Opposite Party that the association was registered on 27.9.91 and, therefore, the complainant cannot legitimately claim Rs. 5,000/- in not forming an association. Similarly, we find that the accounts produced by the society were not disputed in the meeting of the society and, therefore, the claim of the complainant that he paid more money for electric and water supply and for registration also cannot be accepted. However, the complainant has successfully proved that the work of his flat was not completed as per the specification in terms of agreement and that he was required to spend Rs. 28,000/- for completing that work. In view of the claim of complainant that he is required to spend Rs. 28,000/- for completing the construction, he is entitled to claim compensation for the said amount as it is as a result of negligence on the part of opposite party. The complainant also proved that he received the possession late and claimed Rs. 16,000/- on that count. However, for the delay of two months, we grant Rs. 4,000/- as compensation. Having thus proved the complaint on these two counts, we are, therefore, inclined to grant the relief to the complainant for the total amount of Rs. 32,000/- towards incomplete work and delayed possession. We also grant to the complainant the cost of this complaint. Hence, we pass the following order:

ORDER

The complaint is allowed. The opposite party shall pay to the complainant Rs. 32,000/- towards the compensation and Rs. 1,500/- as cost of this complaint. The other claims of the complainant are dismissed as not proved. The complainant be paid the aforesaid amount within 30 days from the receipt of this order failing which the complainant will be at liberty to move this Commission for its execution.

Complaint allowed.

I (1993) CPJ 474

GUJARAT STATE CONSUMER DISPUTES REDRESSAL COMMISSION, AHMEDABAD

Present: Hon'ble Mr. Justice S.A. Shah, President; Ms. Leelaben Trivedi, Member.

MADHUBEN KANTILAL DOSHI SAMIR

—Appellant versus

VITRAG CO-OP. HOUSING SOCIETY LTD.

—Respondent


Consumer Protection Act, 1986 — Section 11 — 'Jurisdiction of the District Forum' — Section 15 — 'Appeal' — 'Jurisdiction' — Appeal against order of District Forum dismissing complaint on ground that cause of action had arisen before the Consumer Protection Act came into force — Hence the Forum had no jurisdiction — Whether the consumer agency has jurisdiction to hear complaint where cause of action had arisen prior to enactment of Consumer Protection Act? — (Yes).

Held: The consumer agency has jurisdiction to hear the complaint even if the cause of action has arisen prior to the enactment of the Consumer Protection Act provided the cause of action survives.

Held further: The appeal is partly allowed. The Respondent (Opponent) will pay Rs. 6,000/- to the complainant which included interest and cost within 5 weeks from today and if the Respondent fails to pay the said amount within 5 weeks the Respondent will be responsible to pay interest @ 18% after 5 weeks till the said amount is realised.

The appeal is disposed of accordingly.

(Order)
Counsel for the Parties:
For the Appellant: Mr. N.M. Kapadia, Advocate.
For the Respondent: Mr. Y.S. Lakhani, Advocate.

Important Point
The consumer agency has jurisdiction to hear the complaint even if the cause of action has arisen prior to the enactment of the Consumer Protection Act provided the cause of action survives.

ORDER
Mr. S.A. Shah, J. — The appellant is the original complainant who had booked a flat from the opponent, organiser of the scheme. The complainant has paid Rs. 5,000/- towards the booking in 1981. She was not allotted a house in the society and her name was not entered as a member of the society. She wrote a letter in 1984 to allot a house or to refund the amount. In response to that letter the opponent informed to deposit Rs. 20,000/- otherwise she would be allotted house from new flats. The complainant demanded that loan may be given to her since she is not able to pay the full amount etc. However, after considering the facts and circumstances, the District Forum dismissed the complaint. One of the grounds was that the Consumer Protection Act came into force recently i.e. after the cause of action has arisen and, therefore, also the Forum had no jurisdiction. To our opinion this observation is not correct. The consumer agency has jurisdiction to hear the complaint even if the cause of action has arisen prior to the enactment of the Consumer Protection Act provided the cause of action survives.

2. After persuasion Mr. Lakhani, the learned advocate appearing on behalf of the respondent is prepared to pay Rs. 5,000/-, the principal amount deposited in 1981 and Rs. 1,000/- by way of interest and/or cost to show grace.

3. Mr. Kapadia, the learned advocate appearing on behalf of the appellant faintly argued and ultimately he accepted that his client will be satisfied if Rs. 6,000/- is ordered to be paid. Considering the fact that the offer to allot flat was made but the complainant could not accept the same on account of financial handicap and considering also the fact that the Respondent, though succeeded before the District Forum is prepared to pay the aforesaid amount, we think that is in the interest of both the parties and we pass the following order.

ORDER
The appeal is partly allowed. The Respondent (Opponent) will pay Rs. 6,000/- to the complainant which included interest and cost within 5 weeks from today and if the Respondent fails to pay the said amount within 5 weeks the Respondent will be responsible to pay interest @ 18% after 5 weeks till the said amount is realised.

The appeal is disposed of accordingly.

Appeal partly allowed.

I (1993) CPJ 84
HIMACHAL PRADESH CONSUMER DISPUTES REDRESSAL COMMISSION, SHIMLA
Present: Hon'ble Mr. Justice D.P. Sood, President; Mrs. Shubh Mahajan, Member; Mr. V. Venna, Member.
AMRIT SAGAR —Complainant
versus
SHIMLA DEVELOPMENT AUTHORITY — O.P.
Complainant No. 7 of 1991 — Decided on 7-8-1992

Consumer Protection Act, 1986 — Residential Plot — Price — O.P. invited applications for residential plot — Complainant applied for type ‘B’ plot in 1986 — Tentative price was Rs. 60,000/-

In 1991 complainant was offered plot — Asked to make additional payment — Complaint filed against... Whether complainant liable to pay enhanced price? — (Yes).

Held: We are of the view that the enhancement of the tentative cost was in the know of the complainant at the time of application. It was duly published in the brochure, a part of the application
form, that the opposite party reserved the right to enhance the tentative cost indicated therein accordingly as the cost of land, material, labour etc. etc. escalated. The complainant cannot thus be heard to say that the opposite party could not enhance the cost at all. (Para 4)

(II) Consumer Protection Act, 1986 — Residential Plot — Delay in allotment —Complainant applied for plot in 1986 — Deposited earnest money in 1986 — Brochure of O.P. declaring period of allotment as one year — Plot allotted only in 1991 — Complaint filed — O.P. averred there was no time schedule for allotment — Whether there is delay in allotment of plot? ... (Yes). Interest @ 18% per annum on deposit granted.

Held: The other limb of this case rests on unduly long taken by the opposite party to develop and offer the plot. Though, the Shimla Development Authority has taken the stand that there was no categorical commitment on their behalf as to the time schedule, we are afraid it is far from correct as evidenced from the note appearing below paragraph-4 titled scope of the scheme. In regard to plots, it is specifically mentioned that these would be made available within one year. Why the offer was made as late as in January, 1991, after more than 4 years has not been explained satisfactorily by the opposite party. Accordingly, it would have to be conceded that for the delay beyond one year there being no satisfactory explanation the complainant becomes entitled to receive interest on the amount(s) deposited by him. Although, the complainant has claimed it @ 22% per annum, we see no warrant to allow it at more than what the complainant himself would have been charged by the opposite party in case of default in payment of instalments. This rate is @ 18% per annum only. (Para 4)

Result: Complaint allowed.

Counsel for the Parties:
For the Complainant: Mr. Bimal Gupta, Advocate.
For the O.P.: Mr. Swatantar Dixit, Advocate.

ORDER

Mr. V. Verma, Member — The complainant, Amrit Sagar, applied for and was allotted one type 'B' plot under the 3rd Partially Self Financing Scheme for Govt. Employees residential complex below Bishop Cotton School in Kasumpti Zone. The plot was to be of 120 sq. metres and was to be leased out at a tentative cost of Rs. 60,000/- payment whereof was to be made in the following manner: —

(1) Earnest money alongwith application Rs. 19,200/-
(2) 1st instalment on allotment before 9.12.1986 Rs. 19,200/-
(3) 12 monthly instalments of Rs. 900/- before 9th of each month from January to December, 1987. Rs. 9,600/-
(4) Balance with interest in 6 years starting from January, 1988 Rs. 12,000/-

The complainant made the deposit of earnest money on 30.6.1986, of first instalment as at (2) supra on 8.12.86 and 12 monthly instalments aggregating Rs. 9,600/- from January, to December, 1987 as in (3) above. The total amount deposited thus comes to Rs. 48,000/- only. On the 28th January, 1991 the complainant was offered plot No. 16 in Sector No. 1, Main Road having a total area of 141.64 sq metres vide annexure 'C' whereby he was asked to make a deposit of Rs. 19,200/- within 45 days from the date of issue, as also to complete certain formalities before he could be handed over the possession thereof. The demand of immediate payment of Rs. 19,200/- was as under:—

(i) Total consideration Rs. 1,28,892/-(ii) Ground rent for 1990-91 Rs. 595/-(iii) Any other amount due before handing over possession. Rs. 19,200/-
(iv) Any other amount due Rs. 19,200 + Rs. 18/- + Rs. 19,218/- before handing over possession.
(v) Total (ii) and (iv) Rs. 19,813/-
(vi) Amount deposited till the date of issue of this letter. Rs. 48,000/-
Balance amount (i) minus (vi) Rs. 61,692/- will be payable in 72 monthly instalments (after recovery of amounts mentioned against S.No. (ii) and (iv) above alongwith interest thereon.

2. It is mainly against the above further demand that the complaint was lodged on 20.2.1991. Simultaneously an application was made seeking restrainment from cancelling the allotment as per terms of the aforementioned allotment letter. This prayer was allowed on 12th March, 1991, and as a sequel thereof the above developed plot still stands allotted to the complainant.

3. The complainant has contested the right of the respondents to enhance the tentative cost and on account of delay in developing the plot and handing over its possession to him, he has claimed the following reliefs:

   (a) the respondents be restrained from insisting upon enhanced amount which may be quashed and set-aside.

   (b) the respondents be directed to hand over the possession of the plot immediately.

   (c) a compensation amounting to Rs. 2 lakhs be awarded towards damages caused due to increase in the cost of construction etc., and

   (d) an additional amount of Rs. one lakh be awarded towards loss of interest on the amount(s) deposited by him from the 1st of the month succeeding elapse of 12 months from the close of the scheme in 1986 and from the 1st of the following month of further deposits than subsequent to the said date till the date of this order. The amount so calculated would be adjusted to satisfy the outstanding demand as per Annexure ‘C’ and the balance if any, would be kept in credit for adjustment against future instalments/dues respecting the aforementioned plot. In addition we allow him a lump-sum compensation of Rs. 5,000/- (Rupees Five thousand) only which the opposite party is hereby made liable to pay by way of credit within 4 weeks from today, under intimation to the complainant.
With the complaint allotment-cum-possession letter dated 14.4.89 was submitted. The complaint was filed through Mukhtyar Khas.

3. The opposite party resisted the complaint by traversing the allegations made in the complaint. It was submitted that on having ensured that 100 registration have been done, land was acquired, Scheme was prepared and that Scheme was sent to HUDCO for financial assistance, as the Housing Board constructs the houses after taking loan from Housing Urban Development Corp., and according to specification by HUDCO. On receipt of the letter from the complainant reply was given on 24.6.89 informing him that if he does not want to take the allotted house, the deposited amount can be refunded to him after deducting 20% in accordance with the Regulations. No pre-receipt was received and so balance amount was not refunded to him. The complainant is not entitled to the amount and interest as claimed. It was submitted that the complainant has impleaded Residential Engineer, Housing Board as party whereas in fact RHB is a corporate body and it should have been impleaded. A plea was taken that the notice was not given to the Board. An objection was taken that the District Forum is not competent to hear the complaint under the Act. It was also submitted to what amount the complainant is entitled can only be determined by a Civil Court and as such Redressal Forum has no jurisdiction.

4. In support of the complaint Mukhtyar Khas, younger brother of the complainant, submitted his affidavit. The opposite party submitted allotment-cum-possession letter dated 14.4.89 and photostat copy of the letter dated 25.5.89 stating that the complainant has failed to deposit Rs. 3.554/- by 13.5.89 and did not obtain the possession. He was asked to deposit the amount with penalty within seven days failing which the allotment would be cancelled under the Regulations and the registration amount after deducting 20% from it, would be refunded to him. Another letter dated 20.7.89 was sent to the complainant informing him that his allotment is cancelled and he may submit an application for refund together with the receipt in the prescribed proforma so that the amount may be refunded after deduction. Parties did not produce any other oral or documentary evidence before the District Forum. It heard the arguments on 20.3.91 and passed the impugned order as stated above. Hence this appeal.

5. The respondent had sent reply to the appeal which is dated 18.1.91. It was received on 24.1.91. It was stated that the appeal appears to be barred by time. An application for condonation of delay supported by affidavit if filed, the copies may be sent. Nobody appeared on behalf of the respondent on 22.1.92. We heard the learned Counsel for the appellant.

6. The objections raised by the complainant respondent were raised in several cases:

"In Kanhaiyalal Mathur v. Housing Board (R.L.T. 90 Part III, 31) and subsequent decision it was observed in Kanhaiyalal's case (supra) that before we proceed further, it may be mentioned that in Jyoti Prakash v. The Rajasthan Housing Board (1979 W.L.N. (UC) 101) it has been held that the Registration Scheme and the allotment schemes are distinguishable and no right of allotment of house is conferred on any applicants registered under the Registration Scheme and they cannot challenge the scheme. It was held in 1985 W.L.N. (UC) 266 by a Division Bench of the Rajasthan High Court that the Board is competent to increase the price beyond ceiling in certain circumstances and one is, increase in the cost of construction. In S.B. Civil Writ Petition No. 1625/86 Deepchand v. Rajasthan Housing Board, decided on 24.9.86 the Housing Board Registration Scheme, 1979 was considered. It was held that the reservation is after only allotment and registration and reservations cannot be equated. No right accrued to the complainant for the allotment of the house by Housing Board Schemes, July September 1973." It was affirmed in Kanhaiyalal Mathur v. R.H.B. (1991 CSMR CAS 118). The National Commission observed:

"As has been pointed out..."
6. No order as to costs. Parties be informed of the operative part of the order.

Announced at Shimla this 7th day of August, 1992.

Complaint allowed.

ORDER

Mr. Justice S.K.M. Lodha, President — Against the order dated 11.4.91 passed by the District Forum, Udaipur in Complaint Case No. 266/89, the opposite party-appellant has filed this appeal under Sec.15 of the Consumer Protection Act, 1986 ("the Act" herein). The District Forum directed the opposite party-appellant to refund the entire amount lying in deposit with it with interest @ 6% p.a. within three months from the date of the order failing which the complainant will be entitled to initiate proceedings under Sec.27 of the Act. Facts leading to this appeal are these:

2. The complainant-respondent submitted an application for allotment of the house. In accordance with letter No. 51660 SG/GRA/82 dated 28.12.82 which was under Regulation 24 of the Disposal of Property Regulations, 1970 ("the Regulations") deposited Rs. 2,000/- under LIG. The opposite party issued a notification dated 9.5.89 to the allottees who were outside Nathdwara to whom the allotment-cum-possession letter dated 15.4.89 for taking possession had already been issued and asked them to take possession, failing which penalty will be recovered and allotment would be cancelled according to the Rules. The complainant is said to have gone to the site for seeing the house of LIG. There he found one room 9' x 10', kitchen 6' x 6' latrine and bathroom. The complainant has alleged that at the time of the registration the opposite party undertook to deliver two rooms, kitchen, bathroom, latrine, chowk and open land in the front and back which were not available in the allotted house. He addressed letters and met personally but the opposite party did not satisfy him. The complainant did not deposit the balance of the amount as asked in the allotment-cum-possession letter and informed the opposite party in writing that the allotted house is not in accordance with the conditions of the registration and that the cost has also been increased. No reply was given. It was requested that either a house in accordance with the specifications may be allotted otherwise deposited amount together with interest may be refunded. According to the complainant the amount deposited was Rs. 5,724/- (4900 + 824) may be returned together with interest and compensation. Costs were also claimed. This complaint was filed before the District Forum, Udaipur on 24.1.89.
mission the allotment scheme has to be distinguished from the registration scheme and no right of allotment to a house is conferred on any applicant by mere registration under a registration scheme. Registration and reservation of allotment cannot be equated and reservation of accommodation follows allotment. Consequently the State Commission has rightly observed that no right accrued to the complainant for the allotment of a house by the Housing Board on registration of the appellant in 1973 et. sq. in the various draws made under the registration allotment schemes introduced from time to the name of the appellant did not figure in the draws made for allotment. There was no contractual obligation on the part of the Board to allot a house to the appellant."

The Rajasthan High Court in D.B. Civil Writ Petition No. 457/1987 decided on 16.7.87 ruled as under:

"A number of petitions of a similar nature have came up before this Court, and this Court came to the conclusion that mere registration does not entitle the applicant to get the house allotted at a price mentioned in the booklet. The allotment of the house has to be at the price when the house is allotted. It is well known that there is escalation of the prices and the price of the house which would have been in the year 1981 when the registration was held out can not be the same in the year 1985-86. The petitioner cannot be said to have been given any assurance that the house shall be allotted to him at a price of Rs. 1,11,900/- which was mentioned in the booklet in the year 1981. The doctrine of promissory estoppel is hardly attracted in the present case as no assurance can be said to have been given that the house shall be allotted to him at a price of Rs. 1,11,900/-."

7. It was held in A.I.R. 1980 S.C.738 that the petitioners grievance that the authority was not entitled to give discriminatory treatment by collecting surcharge as component of price in sale of flats constructed under the MIG scheme. It was further held that the State had its agency entering into contractual field then the relations are not governed by the constitutional provision and no question arises of violation of the Constitutional provisions including Art. 14. Reference may be made to S.B. Civil writ petition No. 1621/86 decided by the Rajasthan High Court on 24.9.86. It was observed:

"Mr. Sharma has submitted before me the Housing Board Registration Scheme, 1979. In that very clause it has been mentioned that as far as practicable the rates shall not be changed after reservation. The reservation is after only allotment; registration and reservation cannot be equated. This very rule provides that the rates can be revised looking to the increase in the costs. Mr. Sharma submits that it can be raised only upto 10 per cent. It is true that prices have not increased after reservation but after registration. In the registration estimated costs is given and the increasing cost cannot be overlooked. There is no case of hostile discrimination and the persons allotted have been treated equally and on the same amount. Even if there is a dispute about the increased rate, it can be agitated before the competent Court of Civil Jurisdiction where the disputed question of facts can be determined, such as, what is the increase has rightly been assessed or not and, if assessed, whether it has rightly been applied or not, can only be considered by the competent Court of civil jurisdiction as in such case the disputed questions of facts are involved."

8. There was no justification for refusing the allotment on the ground of the increase in price. As regards the construction and apartments it may be mentioned that whatever is provided is merely indication. Construction of apartments depends on the availability of the land and also with regard to the funds that are available for construction to the Housing Board. Thus there was no justification for the complainant-respondent to refuse the allotment as has been stated by him in the complaint. The position comes to this that allotment was made and the allotment-cum-possession letter was issued but he failed to deposit the amount in pursuance of the allotment-cum-possession letter dated 14.4.89. In these circumstances the question arises whether the District Forum was right in
giving a direction that the entire amount should be refunded together with interest @ 6% p.a.

9. The District Forum considered clauses 1.15.3 and 1.15.4 of the General Registration Scheme, 1982. It took note of the contention raised on behalf of the opposite party that after the construction of the house and determining its price, the house was offered to the complainant and it was for the complainant to accept the offer or not to accept it. The District Forum held that the opposite party-appellant had no right to deduct the amount from the deposited amount as the complainant respondent submitted an application for the allotment of the house without conditions and reservations. The house was not made available to him according to the area specification and cost and so the District Forum opined that the complainant-respondent is entitled to the entire amount together with 6% p.a. interest. The correctness of the order has been challenged before us. The District Forum misdirected itself as held by us above on account of increased price, or change in accommodation the opposite party-appellant was not entitled to deduct any amount.

10. According to Clause No. 1.12 of the Booklet the opposite party-appellant was empowered to fix the price for the houses built by it, whether disposed of on outright sale or hire purchase basis and the decision of the Board in this regard is final. Mr. M.L. Vyas learned Counsel for the appellant invited our attention to condition No. 1.1 relating to the cost of houses mentioned in the booklet “From Registration to the Allotment of houses Procedure” published by the opposite party-appellant. According to him these are binding on the parties under agreement. They have not been taken into account by the District Forum. The matter whether clauses 1.15.3 and 1.15.4 are attracted in this case or not need not pursued further for the simple reason that learned Counsel for the opposite party-appellant has submitted a photostat copy of the office order No. 89/3364 dated 29.3.89. Clause A of that Order is as follows:

It provides that if the allottees who have been allotted houses after 1.11.88 do not take the houses a deduction of 10% from the registration amount will be made as administrative expenses and that no amount of interest will be payable on the registration and seed money. The District Forum has categorically stated in the impugned order that the house was allotted to the complainant-respondent. He did not pay the cost of the house as mentioned in the allotment letter dated 14.4.89. According to the complainant he did not agree to pay the cost as stated in the allotment-cum-possession letter for the reason that the cost has been increased, the area has been reduced and the apartments are not as per specification. May be for any reason as we have held above on the basis of the authorities that the complainant respondent could not insist that the house should be allotted to him on the cost notified earlier which was merely tentative, area and specification were only indicative. There was no contractual obligation on the part of the opposite party to allot a house to the complainant-respondent. No binding contract came into existence merely on account of the registration of the name of the complainant-respondent. The complainant-respondent has deposited as stated in the impugned order and for which there is no controversy. Rs. 1800/- as registration fee and Rs. 3,000/- as seed money. According to the office order dated 29.3.89 referred to hereinabove which has been produced by the learned counsel for the appellant as the allotment was made after 1.11.88, the complainant-respondent is only entitled to the registration fee after deducting 10% of the amount which in this case is Rs.180/- and no deduction can be made from the amount of the seed money. Interest is not payable on the registration amount and seed money as per the office order. It may be mentioned that this is more advantageous to the complainant-respondent in comparison to clauses 1.15.3 and 1.15.4.

11. In these circumstances the order under appeal dated 11.4.91 needs to be modified. It is held that the complainant-respondent is entitled to the refund of the amount of Rs. 1620/- (after
deducting 10% of Rs.1800/-) as registration fee and Rs.3,000/- as seed money. No interest is payable on the aforesaid two amounts in pursuance of the order. The appeal is allowed and the order dated 11.4.91 passed by the District Forum, Udaipur in Complaint Case No. 266/89 is modified. The complainant-respondent shall be paid a sum of Rs.4620/- on account of the refund of the registration fee and the seed money within one month from the date of the receipt of the order failing which resort will be made to Sec. 27 of the Act.

12. The appeal is partly allowed and the order is modified as indicated above. In the circumstances of the case the parties are left to bear their own costs.

Order modified.

1 (1993) CPJ 68 (NC)
NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI
Present: Hon'ble Mr. Justice V. Bhatrakrishna Eradi, President; Mr. Y. Krishan, Member; Mr. Justice B.S. Yadav, Member.
DILIP BAPAT & ANR. - Appellants
versus
PANCHAVATICOOPERATIVE HOUSING SOCIETY, LTD. - Respondent
First Appeal No. 64 of 1991 - Decided on 10.12.1992

Consumer Protection Act, 1986 - Section 14(1)(d) - "Housing" - Complainants are members of a Housing Society - The flats were to be constructed and the cost of each flat was Rs. 60,500/- and the remaining was to be paid in instalment expect Rs. 2,500/- which was to be paid at the time of delivery of possession - Society also demanded escalation cost - Complainants filed a complaint and agreed to pay Rs. 39,500/- within three months time - State Commission directed them to pay Rs. 37,000/- with 14% interest and the escalation cost was directed to be decided in consultation with all members - Hence appeal.

Held: We have heard the parties and have given our anxious consideration to the disputes between the parties. We have come to the opinion that in the present case the complainants are to be blamed for the whole dispute. It appears from the correspondence filed on the record that the complainants are not prepared to make any payment in spite of their consent having been given before the State Commission. They are insisting that they will make the payment only when the possession of the flats is given to them. Unless the members provide funds to the Society, further construction work cannot be taken by the Society.

On behalf of the complainants it was also argued before us that there has not been any escalation in the price of the flats as the land and material had been purchased before the construction was brought to standstill on account of the objections raised by the Bombay Municipal Corporation and if there is any escalation of costs it can only be in the costs of labour. This Commission cannot go into such questions that when the material had been purchased and what should be the date of escalation. In compliance of the orders of the State Commission, the Society has already called a meeting of the General Body of its Members to decide the question of escalation in the price. The complainants can raise the objections in that meeting as they being members of the Society can take part in that meeting.

The complainants also made a grievance of the fact that the Society was not issuing any revised certificate to them to enable them to borrow money from somewhere to pay the dues of the Society. It has not been shown that the Society is bound to give any such certificate. Moreover, about this grievance of theirs, the complainants have been
writing letters to the Deputy Registrar, Co-operative Societies (‘K’ East Ward, Bombay) and were getting directions from the said officer, addressed to the Secretary/Chairman of the respondent Society. If the office bearers of the Co-operative Society are not complying with the directions of the Deputy Registrar, Co-operative Societies, the complainants can make complaint to the said officer. In fact, the complainants have produced letter to show that the Deputy Registrar, Co-operative Societies has issued show-cause notice to the Managing Committee of the Society about the alleged mismanagement and misappropriation. The complainants themselves have addressed a letter dated 3rd September, 1992 addressed to this Commission to show that the allegations contained in the show-cause notice issued to the Managing Committee of the Society have been proved and the Managing Committee has been dismissed. We have not been able to understand that when the complainants are approaching the Deputy Registrar, Co-operative Societies for taking action against the Managing Committee of the Society, how they can have second recourse to this Commission about the mismanagement of the affairs of the Society by the Managing Committee. In any case this Commission is not concerned with the alleged activities of the Managing Committee.

Lastly, it was argued that the directions issued by the State Commission are not of binding nature. We are of the opinion that that directions had been issued by the State Commission just to help the complainants otherwise under Section 14(1) of the Consumer Protection Act no such directions can be issued.

Result: Appeal dismissed.

Counsel for the Parties:

For the Appellants: Mr. John Jeseph, Advocate.

For the Respondent: Mr. B. Rajeshwara Rao, Advocate.

ORDER

Mr. Justice B.S. Yadav, Member — The present appellants, D.N. Bapat and Mrs. M.D. Bapat are members of Panchavati Coop. Housing Society Ltd. (respondent herein which is hereinafter referred to as the Society). The Society is constructing flats for allotment to its members. These appellants paid Rs. 60,500/- each as part payment towards the flat allotted to each of them. The flats were still to be constructed. The cost of each flat was Rs. 1 lac. Out of the remaining cost of the flats, Rs. 37,000/- were to be paid in instalments and Rs. 2,500/- were to be paid at the time of delivery of possession. The construction work had to be stopped by the Society in compliance with the notice issued by the Bombay Municipal Corporation. The Corporation removed the objection on 10th May, 1989 and the work was restarted by the Society. There was some dispute between the appellants and the Society about the payment of remaining amount, perhaps, due to the alleged escalation in the cost of construction. The Society was demanding more amount from each of the appellants. The appellants filed a complaint before the Consumer Disputes Redressal Commission, Maharashtra State, New Bombay, alleging that they had stopped paying the instalments as the construction work was stopped due to certain objections by the Bombay Municipal Corporation and the Society had orally ordered the members not to pay the balance amount. It was also pleaded by the appellants that they wanted to raise loans for the payment of the instalments by the society, but the society was not furnishing them fresh certificates so as to enable them to obtain loan from the financing agencies. The complainants, therefore, prayed for the grant of Rs. 2,09,100/- as compensation.

2. The society contested the complaint petition on many grounds. However, it is not necessary to refer to them because before the State Commission the Society had stated that if the complainants paid the balance with interest the Society can undertake the completion of the remaining construction of the flats at the earliest because no construction could be made by the Society unless the funds were provided by the members (complainants are admittedly members of the Society). The State Commission remarked that the complainants would cooperate with the Society for payment of their balance amount of Rs. 39,500/- each, which was admitted by them with interest at
the permissible rate as decided by the Society by a resolution under bye-law 74 of the Society, from the date of removal of the objection till the date of payment except Rs. 2,500/- which is to be paid on the date of possession. As regards the escalation of prices due to delayed construction, the State Commission remarked that the Society has to take into confidence the members of the Society including the complainants (now appellants) to arrive at the actual escalation of prices in relation to a particular item. The complainants indicated their willingness before the Commission to pay agreed balance amount of Rs. 39,500/- each and requested three months' time for making that payment. In view of the above concessions by the parties the State Commission passed the following order on 31.1.1991:

"The Complainants shall make the payment of the admitted balance of amount of Rs. 37,000/- with 14% p.a. interest from the date of the commencement of the work after removal of objection by the Municipal Corporation within a period of three months' from today. The amount of Rs. 2,500/- shall be retained by the complainants and be paid to the Society at the time of the possession as per the letter of agreement. As regards the escalation of the prices of material we direct the Society to decide this issue in consultation with all the members of the Society including the complainants in their General Body Meeting and then recover from each member the balance amount of escalation. Under these circumstances, we do not find any claim of the complainants just for grant of compensation and for payment of cost. We also direct that the Society shall strictly follow the byelaws in relation to the policy for allotment of flats. The Society is, therefore, directed to follow the byelaws 78 of the Society and shall issue the letters of allotment of flats to the complainants in the prescribed form which are at Appendix XIII of the byelaws. We, therefore, direct that the Society shall follow the relevant byelaws Nos. 26, 78 of the Society."

3. The Complainants were not satisfied with the above order and have filed this appeal. Their complaint is that the Commission was not justified in ordering the appellants to pay interest at the rate of 14% on the sum of Rs. 37,000/- for each flat from May, 1989 to the date of payment because they could not pay this amount to the Society for the fault of the Society as it did not issue revised certificates for enabling them to borrow money and pay the instalments. They also objected to the State Commission's order about the escalation price to be paid by them. According to them they are not liable to pay escalation costs since the construction work was stopped by the Bombay Municipal Corporation due to Society not following the rules. It is also averred that the State Commission has not given any binding order to the Society to complete the flats within some specified time and handover the possession of the two flats to the appellants.

4. The appeal has been contested by the Society. They pleaded that in spite of reminders the complainant had failed to pay the remaining amount and on the contrary insisted that they would pay full amount only when the possession of flats were given to them. Under the letter of allotment the members were required to pay the full amount except Rs. 2,500/- which was to be paid at the time of taking possession of the flat. They also pleaded that under Section 91 of the Maharashtra Cooperative Societies Act the dispute is exclusively triable by the Co-operative Courts as the dispute is between the appellants who were members of the Society and Co-operative Society.
5. Along with the reply the respondent has also filed a copy of the letter written by it to the complainant-appellants on 25th March, 1991 to the effect that though the question of escalation in the prices had already been decided by the General Body of the Members of the Society, the Managing Committee had again decided to bring this issue before the ensuing General Body Meeting in view of the order of the State Consumer Disputes Redressal Commission. The complainants were also informed that as they were not making payments, possession of any flat cannot be given to them and the possession of complete flats was being given to the other members who had made payments.

6. We have heard the parties and have given our anxious consideration to the disputes between the parties. We have come to the opinion that in the present case the complainants are to be blamed for the whole dispute. It appears from the correspondence filed on the record that the complainants are not prepared to make any payment in spite of their consent having been given before the State Commission. They are insisting that they will make the payment only when the possession of the flats is given to them. Unless the members provide funds to the Society, further construction work cannot be taken by the Society.

7. On behalf of the complainants it was also argued before us that there has not been any escalation in the price of the flats as the land and material had been purchased before the construction was brought to standstill on account of the objections raised by the Bombay Municipal Corporation and if there is any escalation of costs it can only be in the costs of labour. This Commission cannot go into such questions that when the material had been purchased and what should be the date of escalation. In compliance of the orders of the State Commission, the Society has already called a meeting of the General Body of its Members to decide the question of escalation in the price. The complainants can raise the objections in that meeting as they being members of the Society can take part in that meeting.

8. The complainants also made a grievance of the fact that the Society was not issuing any revised certificate to them to enable them to borrow money from somewhere to pay the dues of the Society. It has not been shown that the Society is bound to give any such certificate. Moreover, about this grievance of theirs, the complainants have been writing letters to the Deputy Registrar, Co-operative Societies ("K" East Ward, Bombay) and were getting directions from the said officer, addressed to the Secretary/Chairman of the respondent Society. If the office bearers of the Co-operative Society are not complying with the directions of the Deputy Registrar, Co-operative Societies, the complainants can make complaint to the said officer. In fact, the complainants have produced letter to show that the Deputy Registrar, Co-operative Societies has issued show-cause notice to the Managing Committee of the Society about the alleged mismanagement and misappropriation. The complainants themselves have addressed a letter dated 3rd September, 1992 addressed to this Commission to show that the allegations contained in the show-cause notice issued to the Managing Committee of the Society have been proved and the Managing Committee has been dismissed. We have not been able to understand that when the complainants are approaching the Deputy Registrar, Co-operative Societies for taking action against the Managing Committee of the Society, how they can have second recourse to this Commission about the mismanagement of the affairs of the Society by the Managing Committee. In any case this Commission is not concerned with the alleged activities of the Managing Committee.

9. Lastly, it was argued that the directions issued by the State Commission are not of binding nature. We are of the opinion that those directions had been issued by the State Commission just to help the complainants otherwise under Section 14(1) of the Consumer Protection Act no such directions can be issued. We do not want to dwell upon this matter as the Society has not come before us in appeal.

10. We have carefully gone through the documents filed in the appeal and we are of the opinion that the complainants are not entitled to any further relief.

11. Truly speaking it is not a case of consumer
dispute under the Consumer Protection Act. The right forum for a member of a Co-operative Society to agitate his grievance is the Co-operative Court under the Maharashtra Co-operative Societies Act.

12. Accordingly, the appeal fails and the same is dismissed. In the circumstances of the case, we make no order as to costs.

Appeals allowed.

ORDER

Mr. Justice B.S. Yadav, Member — The facts relating to this appeal are that the present appellant, Social Welfare Housing (I) Ltd., having its branch office at Vashi in New Bombay is a financing company. It issued an advertisement showing that it was prepared to finance persons who are in need to purchase houses. Acting on that representation, the complainant, Mr. Anil Kumar Mattey (who is respondent herein) approached the appellant for a loan of Rs. 2,17,000/- under a Housing Scheme. It is not necessary to dwell upon the procedure or formalities about the advance of the loan. Suffice it to say that the complainant was advanced Rs. 1,16,000/- towards the loan for the purchase of a house. Remaining instalments by means of a cheque for Rs. 1,01,000.00 was issued by the company but the bank did not honour the cheque. The company did not advance the remaining amount i.e. Rs. 1,01,000/- to the complainant. He, therefore, filed the complaint before the Maharashtra State Consumer Disputes Redressal Commission, Bombay alleging deficiency in the rendering of the service by the company. He prayed for a direction requiring the company to pay to him the balance amount of Rs. 1,01,000/- plus Rs. 40,000/- which he had suffered on account of loss as he had to pay interest to the persons from whom he borrowed money plus Rs. 50,000/- as compensation.

2. The appellant-company did not appear before the State Commission in spite of notices. In support of his case the complainant filed his affidavit along with a copy of a letter dated 12th December, 1991 addressed to the company. After going through the allegations of the complainant, the State Commission came to the conclusion that the company was guilty of unfair trade practice inasmuch as the written representations made to the complainant were false and it did not adhere to the schedule of payments of the loan to the complainant despite the fact that the complainant had fulfilled all the necessary formalities to get the loan. It was also held that the complainant had hired services of the company for financing his project of construction of a house. The
State Commission directed the opposite parties (i.e. the company, its branch office and its Managing Director and Director) jointly and severally to release the balance amount of Rs. 1,01,000/- towards the loan to the complainant and to pay him Rs. 40,000/- for loss of interest. The complainant's claim for compensation was disallowed on the ground that no material had been placed on the record to prove the quantum of compensation. Feeling aggrieved of that order, the company has come before us in appeal.

3. The learned Counsel for the appellant vehemently argued that the direction issued by the State Commission could not have been issued under Section 14(1)(d) of the Consumer Protection Act. He argued that in view of that provision if a forum constituted under the Act is satisfied that any of the allegations contained in the complaint about the services are proved, the forum can only issue an order to the opposite party directing him:

"to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party."

4. We are of the opinion that the said argument has force. In view of Clause (d) of Section 14(1) of the Act, if a consumer suffers any loss or injury on account of any deficiency in the rendering of service by the opposite party, he can only be allowed a certain sum of money as compensation. In the present case, the complainant has not been awarded any compensation by the State Commission. On the other hand, certain reliefs have been granted to the complainant which could not be granted under the Act. Therefore, we have no other option but to set aside the order of the State Commission.

5. The complainant has not filed any appeal against the order of the State Commission disallowing compensation to him. Therefore, we have also no option but to dismiss his complaint.

6. For the foregoing reasons, we accept the present appeal, set aside the impugned order of the State Commission and dismiss the complaint filed by the respondent-claimant. In the circumstances of this case, we leave the parties to bear their own costs.

Appeal allowed.
BIHAR STATE HOUSING BOARD v. TE DISTRICT FORUM


Held: Rule 8(4) of the Bihar Consumer Protection Rules 1987 (hereinafter called the Rules) lays down that if the appeal is presented after the expiry of the said one month the appellant has to file a petition supported by an affidavit stating the facts indicating that there was sufficient cause for the appellant for not filing the appeal within the period of 30 days from the date of the order. This petition under Rules 8(4) of the Rules was not filed alongwith memo of appeal. The appeal was presented on 21.12.91 whereas the said petition under Rule 8(4) of the Rules could be filed before this Commission on 13.2.92. This itself was sufficient ground for rejecting the memo of appeal.

(Para 4)

(iii) Consumer Protection Act, 1986 - Appeal - Limitation - Autonomous Board - Whether an Autonomous Board or Corporation stands on different footing in the matter of limitation than a private party? - (No).

Held: The opposite party being an Autonomous Board or Corporation cannot claim to be on a different footing than a private party for the purpose of condoning delay under Proviso to Sec. 15 of the Act. The Supreme Court has held in the State of West Bengal v. The Administrator, Howrah Municipality and Others (A.I.R. 1972 Supreme Court 7) whether it is Government or a Private Party, the provisions of law applicable are the same, unless the Statute itself makes any distinction. In the Bihar State Board of Religious Trust v. Ramashray Prasad Chaudhary, A.I.R. 1977 Pat. 272, it has been held that Bihar State Board of Religious Trust was not entitled to any different treatment than a private party.

(Para 6)

Result: Appeal dismissed

Cases referred:
the certified copy and that this appeal was presented before this Commission within a month from the dates of the receipt of the certified to be true copy of the order and thus there was sufficient ground for not presenting this appeal within the prescribed period.

4. Section 15 of the Consumer Protection Act (hereinafter called the Act) lays down that any person aggrieved by the order made by the District Forum may file an appeal against such order before the State Commission within the period of thirty days from the date of the order and it further provides that the State Commission may entertain an appeal even after the expiry of that period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period. Thus under Section 15 of the Act the terminus a quo for the period of limitation runs from the date of order. Rule 8(4) of the Bihar Consumer Protection Rules 1987 (hereinafter called the Rules) lays down that if the appeal is presented after the expiry of the said one month the appellant has to file a petition supported by an affidavit stating the facts indicating that there was sufficient cause for the appellant for not filing the appeal within the period of 30 days from the date of the order. This petition under Rules 8(4) of the Rules was not filed along with memo of appeal. The appeal was presented on 21.12.91 whereas the said petition under Rule 8(4) of the Rules could be filed before this Commission on 13.2.92. This itself was sufficient ground for rejecting the memo of appeal. But even on taking into consideration the facts mentioned in the petition, the Commission is not satisfied that there was sufficient cause for presenting this appeal after such inordinate delay.

5. Even if the facts mentioned in the petition are accepted the opposite party—appellant got the knowledge about the impugned order on 20.9.91 when a notice for violation of the impugned order along with a photo stat copy of a petition of the complainant was received by the O.P. But no action was taken for filing the appeal. Second notice was sent to the O.P. by the District Forum for noncompliance of the impugned order which was received in the office of the appellant on 30.11.91. But even then no action was taken by the appellant for filing this appeal. Petition for certified to be true copy of the impugned order was filed by the appellant before the District Forum on 13.12.91. There appears no reason as to why the appellant did not take any step from 20.9.91 to 13.12.91 for obtaining certified to be true copy of the order concerned. Even if it is accepted that the appeal could be filed within 30 days from the date of knowledge there appears no reason as to why this appeal could not be presented within a month from 20.9.91.

6. The opposite party being an autonomous Board or Corporation cannot claim to be on different footing than a private party for the purpose of condoning delay under Proviso to Sec. 15 of the Act. The Supreme Court has held in the State of West Bengal v. The Administrator, Howrah Municipality and Others (A.I.R. 1972 Supreme Court 7) whether it is Government or a Private Party, the provisions of law applicable are the same, unless the Statute itself makes any distinction. In the Bihar State Board of Religious Trust v. Ramashray Prasad Choudhary, A.I.R. 1977 Pat. 272, it has been held that Bihar State Board of Religious Trust was not entitled to any different treatment than a private party.

7. Thus taking into consideration the facts and circumstances relied upon by the opposite party we find not the least merit in the application of condonation and dismiss the same. Consequently, the appeal is dismissed as barred by limitation. There is no order as to costs.

Appeal dismissed.
H.U.D.A., HISSAR v. CHUNI LAL MALHOTRA & OTHERS

II (1993) CPJ 967

HARYANA STATE CONSUMER DISPUTES REDRESSAL COMMISSION, CHANDIGARH

Present : Hon'ble Mr. Justice S.S. Sandhawalia, President; Smt. Basanti Devi, Member; Mr. S. Kulwant Singh, Member

H.U.D.A., HISSAR —Appellant

versus

CHUNI LAL MALHOTRA & OTHERS —Respondents

FA Nos. 160 & 161/1993—Decided on 14-6-1993

(i) Consumer Protection Act, 1986—Section 15—Appeal—Plot—Interest—Complainant allotted a plot—O.P. demanded interest from date of offer of possession—Complaint filed—No development on site—No demarcation of plots—District Forum directed refund of interest charged—Appeal.

Held: The District Forum noticed in terms that before it, it was not disputed at all that the appellant had both failed to demarcate the plots sites and further to provide the elementary amenities like road, electricity, sewerage etc. at the time of the alleged offer of possession. Once that is so, it is plain that an offer of possession is not merely an empty paper formality. (Para 8)

(ii) Consumer Protection Act, 1986—Section 15—Appeal—Jurisdictional objections—Jurisdictional objections to be taken at very commencement of the proceedings.

Held: It is somewhat elementary that jurisdictional objections have to be necessarily pressed at the very commencement of the proceedings and if it is not so done the party concerned must be deemed to have waived the same. (Para 6)

Result: Appeal dismissed with costs.

Counsel for the Parties:
For the Appellant : Mr. Sanjeev Sharma, Advocate.
For the Respondent : Mr. C. B. Goel, Advocate.

ORDER

Mr. Justice S.S. Sandhawalia, President—First Appeals Nos. 160 & 161 of 1993 are directed against the virtually identical orders of the District Forum, Karnal dated the 3rd of March, 1993. Learned Counsel for the parties are agreed that the issues of law and facts are common and this order will govern both of them.

2. The representative facts may be noticed from First Appeal No. 160 of 1993 'H.U.D.A. v. C.L. Malhotra & Others'. The Haryana Urban Development Authority had admittedly developed Sectors 8 & 9 in the Urban Estate at Karnal. The respondent was an allottee of Plot No. 883 therein. The primal grievance of the respondent was that there had been no development worth the name on the site and consequently possession was not delivered to the consumer-respondent. However, the opposite party levied interest @ 12% per annum on the price of the plot in contravention of the terms and conditions from an arbitrary date of the alleged offer of possession. It was the firm plea that since the area has never been developed nor plots demarcated, the possession of the plot could not possibly be delivered and consequently no interest could be charged.

3. On notice being issued, the appellants put in their written statement in which some fragmentary preliminary objections were taken, but patently not at all were pressed before the District Forum and consequently the reference to them is unnecessary. The core of the plea taken on behalf of the appellant was that interest could be charged from the date of the offer of possession and not necessarily from delivery and since such an alleged offer had been made on the 20th April, 1990, the levy of interest on the said date was justifiable.

4. The District Forum noticed that it was undisputed that the appellant had failed to demarcate the area and provide the amenities like road, electricity, sewerage etc. at the time of the alleged offer of possession which was consequently meaningless. In the result, it was directed that the amount of interest charged be refunded to the respondent.

5. Mr. Sanjeev Sharma, the learned Counsel for the HUDA apparently bereft of a meaningful argument, took up the hyper-technical plea of their being a lack of jurisdiction on the part of the District Forum. It was contended that on the ground alone the order under appeal was non-est.
6. The submission aforesaid has to be only noticed and rejected. It is manifest from the order under appeal that even though the appellants were fully represented by Shri Jaswant Singh, Additional District Attorney, not the least attempt was made to urge or raise any jurisdictional objection at the threshold. This indeed was very fairly conceded by Mr. Sharma. What next meets the eye is that even on the grounds of appeal herein not a hint or any mention of the preliminary objections has been raised. It is somewhat elementary that jurisdictional objections have to be necessarily pressed at the very commencement of the proceedings and if it is not so done the party concerned must be deemed to have waived the same. In this situation, we find not the least merit in the submission of the learned Counsel seeking to resurrect the ghost of preliminary objections for the first time at the appellate stage, without even mentioning them in the grounds.

7. Mr. Sharma had then argued vehemently that the terms and conditions provided for the levy of interest from the date of the offer of possession and consequently the respondent could not opt out therefrom. It was submitted that a formal offer had in fact been made and consequently the levy of interest was justifiable.

8. The aforesaid submission has only to be noticed and rejected. The District Forum noticed in terms that before it, it was not disputed at all that the appellant had both failed to demarcate the plots sites and further to provide the elementary amenities like road, electricity, sewerage etc. at the time of the alleged offer of possession. Once that is so, it is plain that an offer of possession is not merely an empty paper formality. In the context, it is somewhat obvious that such an offer can only be made when development is complete, and in any case a reasonable development on the spot has been done by a developer of the appellant-HUDA's stature. What further calls for notice is the fact that the respondent had put in a clear and categoric affidavit in support of his case averring in no uncertain terms that there was not a hint of development at the material time and even the zonning had hardly been completed. Significantly the respondent was not at all challenged by way of cross-examination and the affidavit evidence has consequently to be accepted as true. Equally the hyper-technical submission that Sectors 8 & 9 of the Urban Estate were on a different footing has not been borne out from the record. Infact on behalf of the respondent Mr. Goel had contended that these were virtually composite sectors. It was further submitted on behalf of the respondents that there is not a title of evidence to dislodge the firm finding of fact by the District Forum that it was beyond the pale of dispute that no development at the material time had taken place. Even Mr. Sharma had conceded that on behalf of the appellant no meaningful evidence whatsoever has been led or place on the record.

9. For the foregoing reasons, both the appeals are without merit and are hereby dismissed with costs which are assessed at a sum of Rs. 500/- in each appeal.

Appeal dismissed with costs.
Conclusion

As a concluding observation it is important to mention that improvement in housing situation is a fact both in urban and rural areas, contributed by both private investment and public sector programmes. This should not, however, lead to slowing down of the initiatives taken by the Central and State Governments and also public financial institutions. Efforts may rather be made to expedite measures to remove legal, procedural and financial constraints to the process of creation of larger and qualitatively and environmentally more appropriate housing stock.