

COMPETITION APPELLATE TRIBUNAL
NEW DELHI

UTPE No.203 /1998

CORAM

Hon'ble Shri Justice G.S. Singhvi
Chairman

In the matter of:

Inder MehtaComplainant

Vs

M/s. Pushpa Builders Ltd. and AnotherRespondents

Appearances Shri Rajesh Kumar Verma, Advocate for the complainant.

None for the respondent

ORDER

The complainant, who was then serving in Oman (Mascat), submitted an application dated 08.07.1991 for allotment of Residential Apartment bearing No. C-3, measuring 720 sq. ft. situated on 6th floor of PushpaAkash Apartment (Saraswati Block) being constructed by Respondent No. 1 inVaishali, District Ghaziabad. After five months, Respondent No. 1 sent letter dated 18.12.1991 to the complainant informing him that the total area of the apartment is 760 sq. ft. and not 720 sq. ft. and price thereof was Rs. 3,49,000/-. Respondent No. 1 also directed the complainant to pay the balance amount of Rs. 49,680/-. A message wasalso sent to the complainant at Muscat vide cable dated 3.1.1992 requiring him to pay the balance price. The complainant sent reply dated 12.01.1992 by which he refused to make further payment stating that construction of the apartment had not been completed within

the stipulated period. Similar communications were exchanged between the parties in May-June, 1992.

2. After about one month, the Public Relation Officer of Respondent No. 1 sent letter dated 18.07.1992 to the complainant and informed him that construction of the apartments in Kaveri Block has been completed and construction in Saraswati block is progressing fast.

3. Although the complainant had not paid full price, the parties (the complainant and Respondent No. 1) signed agreement dated 27.12.1993 by which Apartment No. C-4, measuring 760 sq. ft. situated on 8th floor of Kaveri Block was sold to the complainant for a total price of Rs. 3,49,600/-

. The relevant extracts of the agreement are reproduced below:

“AGREEMENT

BETWEEN

Pushpa Builders Limited

AND

MR. INDER MEHTA

.....

AGREEMENT

ARTICLES OF AGREEMENT made at Ghaziabad this 27th day of Dec. One Thousand Nine Hundred and Ninty Three BETWEEN M/s PUSHPA BUILDERS LIMITED, a Company Limited by shares, registered under the Companies Act,1956 and having its Registered office at Unit No. 3 Lower Ground Floor, DDA Building, Nehru Place, New Delhi-110019, referred to as “THE PROMOTER’ which expression (hereinafter shall, unless it be repugnant to the context of meaning thereof, mean and include its successors and assigns) of the ONE PART AND.....

MR. INDER MEHTA

P.O.BOX 1030, SEEB AIRPORT SULTANTE OF OMAN MASCAT

.....(hereinafter called ‘THE BUYER’ which expression unless it be repugnant to the context or meaning thereof shall be deemed and include

his/her/their or each of their heirs, executors, administrators and assigns) of the OTHER PART :

AND WHEREAS the Buyer has examined the Building Plans, designs and specifications of the proposed residential buildings and has approved the same and has agreed that the Promoter may make therein such variations, modifications or additions, as may be required by the Ghaziabad Authority or any other authority or as the Promoter in his sole discretion may think fit, proper and necessary;

AND WHEREAS the Company shall have the right to effect suitable and necessary alterations in the lay-out plan, when found necessary alterations which may involve all or any of the changes, viz. change in the position of the flat, or change in the number of the flat or change in its boundaries or to implement any or all of the above changes. If proposed super area differs at the time of occupation, the cost will be adjusted proportionately. If for any reason the Company is not in a position to give possession of the flat allotted, the Company shall be responsible only to consider for any alternative property or refund of amount deposited with the simple interest at the rate of 12% p.a.

AND WHEREAS the Buyer having already been satisfied with the stated facts, applied for allotment of space in the building on ownership basis and the Buyer was allotted the Apartment No. C-4 on Floor 8th in building Block Kaveri in the said Complex on the basis of application of the Buyer dated 8.7.1991 and which has been duly signed by him as token of his having accepted the allotment on terms and conditions mentioned therein and that application forms part of this agreement.

A proper Agreement to sell is being executed, which includes all the details of application dated 8.7.91 which forms part and parcel of this agreement.

NOW THEREFORE THIS DEED WITNESSETH AND IT IS HEREBY AGREED AND DECLARED (BY AND BETWEEN THE PARTIES HERETO) AS FOLLOWS:

SALE PRICE & MODE OF PAYMENT

(3)(a) The buyer agrees to buy and the Promoter agrees to sell the Apartment No. C-4 on the 8th floor in Block Kaveri of the Complex

(hereinafter referred to as ; the flat or the said flat') as per plans and specifications inspected, seen and approved, by him for Ss. 349600/- (Rs. Three Lac Fourty Nine Thousand Six Hundred only) having an approximately super area of 760 sq. ft plus garden area.....Sq. Ft.

(b) The Registration of the above said space is for the super area/space. Super area includes the area under periphery walls, balconies, verandahs and proportionate area of the passages, lifts, corridors, toilets, columns comprising the space, almirahs, staircase, mummies, machine rooms, common stores etc. and half of the area under common walls between the two flats. Open area or loft where provided, will be charged extra. Covered balconies will be charges at full rates. Recessed space below window sills be charged proportionately at full rates.

(c) If for any reason any changes are required to be made by the sanctioning authorities or by the Architects or the Promoter resulting in reduction of increase in the above mentioned area or its location, no claim, monetary or otherwise will be raised or accepted except that the deposit per sft. Of super area will be applicable on the changed area. If any difference is found at the time of handing over actual possession of the said flat to the Buyer, the price will be adjusted accordingly.

(d) If for any reason the whole project is abandoned or abnormally delayed, no claim will be preferred except that Buyer's money will be refunded with 12% interest.

SCHEDULE OF INSTALMENTS

(4)(a) The total price of Rs. 3,49,600/- (Rupees three Lac Fourty Nine Thousand Six Hundred only) as aforesaid shall be paid by the Buyer to the Promoter in instalments as agreed upon in the Application form dated 8.7.91 and repeated hereunder or any other mode mutually agreed upon.

- 1) 10% as earnest money Deposit along with application form in May. 1989
- 2) 15% within one month of the date of application
- 3) 3% per month for 25 months before 15th of each calendar month

- (b) Instalments due towards deposit of the Flat will be paid at intervals as laid down by the Company and stated above. If any payment is not received within the stipulated period given in the above schedule, the allotment and the whole of earnest money i.e. 10% of the price of flat already received will be forfeited and the balance amount will be refunded without any interest within 30 days of the cancellation, on surrendering of original receipts and documents by the Buyer. Alternatively, penal interest for the period of delay @ 24% per annum will be charged. The absolute discretion in this behalf will be with the Promoter.

COMPLETION OF BUILDING

(5) The Promoter shall endeavor to complete the building and hand over the possession of the Flat to the Buyer on or before 31st day of Dec. 1994 subject to payments of all the instalments by the Buyers in time, availability of cement, steel, other building materials, supply & installation of lifts, electric sub station, electric and/or power & sewer connection, issuance, occupation/completion certificates by competent local authorities and subject also to "Force Majure," including Act of God, such as earthquake, floods or any other natural calamity, and/or civil commotion. War, Restricting by Government/Concerned Authorities or other public authorities or any other cause whatsoever beyond the control of the Promoter. No claim by way of penalty or compensation shall be made by the Buyer or be payable by the Promoter in case of delay in handing over possession on account of the aforesaid reasons or any other reason beyond the control of the Promoter. In case the Building does not get completed or the flat to be acquired by the Buyer is not constructed, amount received by the Promoter shall be refunded to the Buyer with simple interest @ 12% per annum upon his surrendering the original money receipt/other documents if any. No other claim shall be made by the Buyer or entertained by the Promoter.

"TIME IS THE ESSENCE OF THIS CONTRACT

29. If the Buyer neglects, omits, or fails for any reason whatsoever to pay to the Promoter any of the amounts due and payable by the Buyer under the terms and conditions of this Agreement)(whether before or after delivery of possession), on or before the respective due date thereof, time being the essence of the contract, or if the Buyer shall in any other way fail to perform or observe any of the covenants and conditions on his part herein contained or referred to, the Promoter shall be entitled to re-enter upon and resume possession of the said flat and everything whatsoever therein, and this agreement shall cease and stand terminated and earnest money and all other amount already paid by the buyer to the Promoter shall be refunded after deducting 20% of the value of the property involved and the Buyer hereby agrees to forego all his rights, title and interest in the said flat and the Buyer shall also be liable to immediate ejection as trespasser but the right given by this clause to this Promoter shall be without prejudice to any other rights remedies and claims whatsoever in law or under this Agreement of Promoter against the Buyer.”

4. Even after signing the agreement, the complainant did not pay the balance price. Therefore, Respondent No. 1 cancelled the allotment. This fact was incorporated in letter dated 13.05.1994, which is reproduced below:

“Ref : PBL/MKT/94-25067 Dated : 13/05/1994

To

Mr. Inder Mehta
Oman Refreshment Co. Ltd.,
P.O. 1030, Seeb Airport,
Muscat, Sultanate of Oman-

Dear Sir,

The above subject unit was allotted to you in response to your application dated 08/07/1991 and as per terms and conditions mentioned therein.

That you have been continuously defaulting in payment on time. On scrutiny of your account, it has been found that a sum of Rs.98,748/- as per terms of agreement, is still outstanding in your name inspite of repeated reminders & notices by our Commercial Department from time to time.

Therefore, your allotment for the above said unit has been cancelled under clause 29 of the sale agreement and other terms and conditions of the Agreement.

Hence you have no claim/lien whatsoever for this unit henceforth.

You may apply for refund as per the terms and conditions mentioned in clause 29 and other terms and conditions of the agreement and complete necessary formalities for refund.

Thanking you,

Yours faithfully,
For PUSHPA BUILDERS LIMITED
Sd/-
Manager (MKT)"

5. The complainant belatedly reacted to the aforesaid action of Respondent No. 1 and sent legal notice dated 26.08.1998. Soon thereafter, he filed petition under Section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 (for short, 'the Act') and prayed that an inquiry be ordered into the unfair trade practice indulged by the respondents and they be directed to hand over possession of Apartment No. C-3, 6th Floor, Sarswati Block, PushpaAkash Apartments. The complainant also filed an application for grant of temporary injunction restraining the respondents from alienating the flat allotted to him.

6. At this stage, I deem it necessary to mention that even though in the cause title and prayer clause of the complaint a reference has been made to Section 12-B of the Act, the same were scored out by the complainant

or someone acting on his behalf and he did not seek amendment of the complaint for incorporating a prayer for award of compensation.

7. After considering the averments contained in the complaint, the erstwhile Monopolies and Restrictive Trade Practices Commission (for short, 'the Commission') ordered notice of inquiry. By an order dated 13.11.1998, the Commission injuncted Respondent No. 1 to keep vacant one flat of the same size and dimension in Saraswati Block.

8. In response to the notice issued by the Commission, Respondent No. 2 Shri V.K. Soin filed affidavit dated 19.12.1998 annexing therewith copies of application dated 8.7.1991 and sale agreement dated 27.12.1993. After some time, a detailed reply was filed on behalf of the respondents in which they controverted that the allegation of indulging in unfair trade practice. At the same time they offered an alternative flat to the complainant subject to payment of the price specified in the agreement.

9. The complainant did not file rejoinder to controvert the fact that on the basis of an application made by him, Respondent No. 1 had allotted Residential Apartment No. C-3, 6th Floor, Saraswati Block of which area was increased from 720 sq. ft. to 760 sq. feet and that he had executed agreement dated 27.12.1993 for purchase of Residential Apartment No. C-4, 8th Floor, Kaveri Block. However, he filed an application under Order 26 Rule 10 read with Section 151 Code of Civil Procedure for appointment of a Local Commissioner. The Commission allowed the application and appointed Shri Vijay Zaverias Local Commissioner with a direction that he shall inspect the site and submit report. Shri Zaveri inspected the construction of Residential Apartments in Kaveri and Saraswati Blocks and submitted report dated 19.5.2001, paragraph 3 whereof reads as under:

“That on 27.04.2001, the commission was executed in the presence of Mr. Avneesh, Advocate for the Complainant and Mr. V.K. Soin, Chairman of the Respondent Company. This report is being divided into three parts as under :

i) SARASWATI BLOCK :

In this block, the Respondent have completed the construction external as well as internal upto the 5th Floor. The construction of the 6th Floor is incomplete with only walls having been raised but no roofing, flooring, plastering of walls etc. have been done by the Respondent. As such, it cannot be said that the Respondent have constructed the 6th Floor in the Saraswati Block.

ii) KAVERI BLOCK :

In this block, a basic structure of the building has been raised upto 14th Floor; upto the 5th Floor, the Apartments have been constructed fully. From the 6th Floor upto the 12th Floor, neither the walls nor any other civil work has been carried out. The Respondent informed me that this was not done as a majority of the Apartments have been sold to Vysya Bank on “as is where is basis” and therefore, the Respondent had not completed the same. Since, it was beyond the scope of commission’s enquiry, the matter was not further verified. The 13th/14th Floor is reported to be a Duplex Apartment and occupied by M/s Fair Growth Financial Services Ltd. A lift has been provided for in this block. However, at the time of inspection, it was reported to be under temporary repairs.

iii) General observations :

- (a)Occupancy: About 12 & 8 families are reported to be living in Saraswati Block and Kaveri Block respectively.
- (b)Water: Water is being provided from three sources. One being supplied by the Municipal Corporation and stored in underground tanks. Besides this, there are two bore wells.
- (c) Electricity: Two 500 KWA Sub-station are installed in the complex, besides, two standby generators are also reported to be operational.
- (d)Sewerage: Sewer line is reported to be complete and linked to the main Specific tank and Soak pit.
- (e)InternalRoads: Roads are laid out and cemented.
- (f)Street Lights: Street lights have been provided for and were functional.
- (g)Lawn: The complex is provided with a lawn which is fully developed.
- (h)Security: 8 guards have been deputed.
- (i) Parking : The parking lot pointed out to me, was complete.

On completion of the site inspection, the execution of the commission ended at 6.30 p.m. Thereafter, the signatures of the parties was obtained on the Rough Inspection Report. Copy of which is being enclosed herewith as Annexure-B."

10. The respondents filed objections dated 8/16th August, 2001 to challenge the findings recorded by the Local Commissioner. They also claimed that vide agreement dated 27.12.1993, the complainant had purchased Flat No. C-4 on 8th Floor of Kaveri Block and construction of that Block has already been completed.

11. In the course of hearing held on 09.04.1999, 28.07.1999 and 13.09.2001 the respondents reiterated the offer of alternative flat, but the complainant refused to accept the same. On 24.9.2003, the case was adjourned to 05.12.2003 for framing of issues. However, that exercise could not be undertaken because no one appeared for the respondent on the next date of hearing. After taking cognizance of the continued absence of the respondents, the Commission ordered ex-parte proceedings. Simultaneously, the complainant was given opportunity to file list of witnesses and affidavits of evidence along with supporting documents. Unfortunately, the complainant did not avail that opportunity. In March, 2006, the counsel for the complainant informed the Commission that liquidation proceedings have been initiated against Respondent No. 1 and the Delhi High Court has appointed the official liquidator. By relying upon his statement, the Commission passed an order dated 21st August, 2006 and adjourned the complaint sine die. After six years and four months, the complainant's advocate sent letter dated 30th November, 2012 to the Tribunal (by virtue of Section 66 of the Competition Act, 2002, the case stood transferred to the Tribunal) enclosing therewith copies of orders passed by the Delhi High Court in two cases pending against Respondent No. 1. On 11th March, 2013, the complainant's counsel informed the Tribunal that the Delhi High Court has ordered revival of Respondent No. 1.

12. As a sequel to revival of Respondent No. 1, the Tribunal passed an order for issue of fresh notice to the respondents. By another order dated 18th December, 2013, the Tribunal permitted 'dasti service of notice'. Shri Narender Kumar Rana, clerk attached to the advocate for the complainant filed affidavit dated 10.02.2014 that the notice has been duly served upon

the respondents. Unfortunately, the Registry of the Tribunal did not scrutinize the affidavit and listed the case for hearing by assuming that the notice issued pursuant to order dated 11.03.2013 has been duly served upon the addressee. This was done despite the fact that no evidence was produced to show that the person who accepted the notice on behalf of the respondents was authorized to do so.

13. On 10.11.2014, the Tribunal heard Shri Rajesh Verma, Advocate for the complainant and dictated an order partly allowing the complaint with a direction to the respondents to refund the amount deposited by the complainant with interest @ 18% from the date of deposit till the date of repayment. However, that order was recalled and fresh notice was issued to the respondent. This is evident from order sheets dated 17.11.2014 and 5.12.2014, which are reproduced below :

On 17.11.2014

“Arguments in this matter were heard on 10.11.2014 and the complaint was partly allowed with a direction to the respondents to refund the amount deposited by the complainant with interest @ 18% per annum from the date of deposit till the date of repayment.

While scrutinizing the draft order prepared by the Court Secretary, I found that the Registry of the Tribunal had committed a serious error by treating the service of notice upon the respondents as proper. Affidavit dated 10th February, 2014 filed by Shri Narendra Kumar Rana, Clerk of the Advocate, shows that he had delivered the notice to one Ms. Neha Chauhan of KWI Holdings, who claimed to be representing Pushpa Builders Pvt. Ltd.

On receiving the affidavit of Shri Narendra Kumar Rana, the Registry of the Tribunal should have enquired as to how Ms Neha Chauhan could be treated as authorized representative of Respondent No.2 and called upon the counsel for the complainant to produce the evidence in this regard. Unfortunately that has not been done. Therefore, the service of notice cannot be treated as proper.

Let the matter be listed on 05.12.2014 for recall of order dated 10.11.2014 and further directions.

The draft order recorded by the Court Secretary be put in a sealed envelope and be kept with the Registrar of the Tribunal.”

On 5.12.2014

“In view of order dated 17.11.2014, let fresh notice be issued to the respondents returnable on 19th January, 2015.

Learned counsel for the complainant says that his client may be permitted to send one set of notice to the respondents by Registered Post A.D. and the other set be allowed to be served upon Shri Harish Uppal, Advocate who was representing the respondents and whose vakalatnama is not shown to have been withdrawn. Learned counsel further submitted that his client may also be allowed to serve the notice by publication in the newspaper.

The request of the learned counsel is accepted and the complainant is allowed to serve notice upon the respondents by the aforesaid three modes. The notice may be published in the Hindustan Times (English) (Delhi edition).”

14. The affidavit filed on behalf of the complainant shows that the notice has been duly served upon the respondents. However, no one has appeared on their behalf.

15. I have heard Shri Rajesh Kumar Verma, learned counsel for the complainant and perused the record. The complainant’s prayer for grant of a declaration that the respondents are guilty of unfair trade practice merits rejection because no evidence has been produced by him to prove the ingredients of Section 36-A or any of the clauses of Section 36-A(1) and in the absence of such evidence, the Tribunal cannot record a finding that the respondents are guilty of unfair trade practice.

16. The documents produced by the parties show that the complainant had submitted an application dated 08.07.1991 for allotment of Flat No. C-3, measuring 720 sq. ft., 6th floor, Saraswati Block in PushpaAkash

Apartment being constructed by Respondent No. 1 and paid Rs.2,53,712/- in installments. However, on being informed by Respondent No. 1 vide letter dated 18.12.1991 that the area of the apartment is 760 sq. ft. and not 720 sq. ft. and he will have to pay additional price of Rs. 49,680/-, the complainant refused to do so. Not only this, he signed sale agreement dated 27.12.1993 and purchased Residential Apartment No. C-4, measuring 760 sq. ft. situated on 8th floor of Kaveri Apartment Block. The price of that Apartment was also Rs.3,49,600/- and the complainant was reminded to pay the balance price, but he did not budge. This led to the cancellation of allotment about which intimation was sent vide letter dated 13.05.1994. For the next four years, the complainant did not question the cancellation of allotment. He filed complaint in 1998 and that too only for grant of a declaration that the respondents have indulged in unfair trade practice and as mentioned above, he has failed to prove the ingredients of Section 36-A or 36-A(1).

17. The complainant's prayer for issue of a direction to the respondents to give possession of the Residential Apartment allotted to him cannot be accepted because in exercise of the power vested in it under the 1969 Act neither the Commission could nor this Tribunal can grant relief in the nature of specific performance of contract. This issue was considered by the Supreme Court in Ghaziabad Development Authority vs. Ved Prakash Aggarwal, [(2008) 7 SCC 686]. After noticing the relevant provisions of the Act including Section 36D, the Supreme Court held:

“13. Having decided issue 1 in the manner indicated above, the other question that we need to decide is whether the MRTP Commission had the jurisdiction to direct GDA to hand over possession of a vacant plot of 90 sq m to the respondent in the Govindpuram Scheme or if not available, an alternative plot in

some other scheme. So far as this question is concerned, we hold that the MRTP Commission was clearly in error in directing GDA to hand over possession to the respondent.

14. Under the Act, there are provisions for inquiries that can be instituted by the MRTP Commission while Section 36-D read with Sections 12-A and 12-B lay down the powers of the MRTP Commission in dealing with instances of unfair trade practices. None of the provisions seem to indicate that the MRTP Commission has the authority to do what it did in this case. The MRTP Commission has the power to impose damages or give compensation to the respondent as a mode of redressal for harm caused by the unfair trade practices, but it certainly cannot assume the powers of the civil court because the action of the MRTP Commission in this case virtually amounts to grant of specific performance.”

18. A somewhat different approach was adopted by a Coordinate Bench of the Supreme Court in V.N. Bharat vs. DDA and Another, [JT 2008 (10) SC 34]. In that case, the appellant had applied for registration for Category-II flat under the 1985 Sixth Self Financing Housing Registration Scheme advertised by the respondent – Delhi Development Authority (DDA). As per the scheme, the flats proposed to be constructed by the DDA were expected to be ready within two years and the successful applicants were to pay the price in installments. The appellant paid the first four installments but did not pay fifth and final installment. Thereupon, a show cause notice was issued by the DDA, the delivery of which was disputed by the appellant. He also requested that fresh demand letter may be issued indicating the amount of sixth installment so that he may take possession. After some correspondence, the appellant paid fifth and sixth installments. He then filed complaint under Section 36-B read with Section 12-A of the Act. The Commission held that the respondent

authority was not guilty of unfair trade practice. The Supreme Court referred to the correspondence exchanged by the parties and held that the respondent has failed to prove delivery of the show cause notice and held that once that the allotment was restored, there was no justification to deny possession of the flat. Paragraph 21, 22 and 23 of that judgment read as under :

“21. Once it is established that the notice of demand for the fifth and final installment had not been received by the appellant, the other consequences, as indicated by Ms. Tripathy, namely, automatic termination and fresh allotment, cannot follow. In any event, in our view the restoration of the allotment did not amount to a fresh allotment on the basis of which the fresh demand notice could have been issued.

22. Having regard to what has been stated hereinabove, in our view the MRTTP Commission erred in law in shifting the onus of proof of service of the demand notice on the appellant and in discharging the notice of inquiry and vacating the interim order issued under Section 12-A of the M.R.T.P. Act. The allegation of unfair trade practice on the part of the respondent authority stands established. The decision of the Commission is, therefore, liable to be set aside.

23. The appeal is, therefore, allowed. The judgment of the MRTTP Commission impugned in this Appeal is set aside. The respondents are directed to accept the sum of Rs.1,63,512/-, which had been deposited by the appellant prior to receipt of the demand notice, together with interest, if any, accrued

thereupon, in full and final settlement of their dues in respect of the flat allotted to the appellant and to hand over possession thereof to the appellant within a month from the date of receipt of a copy of this order.”

19. The apparently inconsistent judgements of the Supreme Court were considered by the Tribunal in UTPE No. 51 of 2004 *Manohar Singh Bakshi Versus Ghaziabad Development Authority* and it was held:

“In my view, the judgment of the two Judges Bench in *V.N. Bharat's case* cannot be relied upon for entertaining the complainant's prayer because the Bench had not noticed Section 36-D of the Act and the earlier judgment of the Coordinate Bench in *Ved Prakash Aggarwal's case*, in which Section 36-D was interpreted and it was held that the Commission (now the Tribunal) cannot assume the power of Civil Court and grant relief in the nature of specific performance. In view of the law laid down in *Ved Prakash Aggarwal's case*, this Tribunal cannot issue a direction for delivery of possession of the flat allotted to the complainant and that too by overlooking the fact that he has not challenged the cancellation of allotment and also the fact that the flat No.KA-06 had already been allotted to another person, namely Mr. AnujRana.

I may also mention that in the earlier rounds of hearing the complainant had relied upon the judgment reported as *J.Sundramma vs. State of Karnataka &Anr. (2013 (5) Scale 394)* and *Kanpur Development Authority vs. Sheo Prakash Gupta &Anr. (2012(9) Scale 667)* but none of those judgments has any bearing on the disposal of this case because the provision of the Act did not come up for interpretation in those cases.

In the result, the complaint is dismissed. However, it is made clear that notwithstanding the dismissal of the complaint, the complainant shall be free to accept the allotment of a new flat bearing

No.KA-097, in respect of which an offer was made to him vide communication dated 02.02.2015 subject of course to the payment of Rs.14,49,084/-. The complainant must exercise option to accept the alternative allotment made within a period of 30 days from today, failing which, the respondent shall not be bound to act upon the same.”

20. By applying the ratio of Manohar Singh Bakshi's case to the facts of this case, I hold that the Tribunal cannot issue a direction to the respondents to deliver possession of the Residential Apartment to the complainant because that would tantamount to specific performance of the agreement and that too by ignoring the fact that the complainant has not challenged the cancellation of allotment.

21. The question which remains to be considered is whether the complainant is entitled to any other relief. A reading of Clause 29 of the Agreement for Sale shows that in the event of cancellation of allotment, the seller was duty bound to refund the earnest money etc. after deducting 20% of the value of the property. A reading of letter dated 13.05.1994 shows that the allotment made in favour of the complainant was cancelled by relying upon Clause 29. That letter did contain a stipulation that the complainant can seek refund of the amount deposited by him but in my view in terms of Clause 29 of Agreement dated 27.12.1993, Respondent No. 1 was under an obligation to refund the amount deposited by the complainant after deducting 20% of the value of the apartment and it cannot take advantage of the fact that the complainant did not come forward to claim refund. The failure of Respondent No. 1 to refund Rs. 2,53,712/- deposited by the complainant after making deduction in terms

of Clause 29 of Agreement dated 27.12.1993 has resulted in miscarriage of justice.

22. In the result, the complaint is partly allowed. The complainant's prayers for grant of a declaration that the respondents are guilty of unfair trade practice and for issue of a direction to them to deliver possession of Residential Apartment No. C-3, 6th floor in Saraswati Block or Residential Apartment No. C-4, 8th floor in Kaveri Block are rejected. However, the respondents are directed to refund Rs. 2,53,712/- deposited by the complainant after deducting 20% of the value of the Residential Apartment in terms of Clause 29 of the agreement dated 27.12.1993. The respondents shall also pay 12% interest to the complainant from the dates of deposit of installments till the date of actual refund.

23. The respondent shall comply with the aforesaid direction within eight weeks from the date of presentation of copy of this order by the complainant. If they fail to do so then they shall have to pay interest @ 18% from the date of expiry of eight weeks till the date of actual payment.

[G.S.Singhvi]
Chairman

Dated :18.05.2015