REPORTABLE

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7042 of 2019

M/S LAUREATE BUILDWELL PVT. LTD. ….APPELLANT (S)

VERSUS

CHARANJEET SINGH RESPONDENT(S)

ORDER

S. RAVINDRA BHAT, J.

1. The appellant (hereafter called “Laureate” or “the builder”) is aggrieved by an order of the National Consumer Dispute Redressal Commission 1 (hereafter “NCDRC”). The respondent (hereafter “the purchaser”) had sought, through his complaint a direction against the builder, for refund of the consideration amount of

₹1,93,70,883/- received by the latter, as consideration for sale of a flat along with interest @ 24% p.a. from the date different instalments were paid, as well as compensation and costs.

2. The relevant facts are that one Ms. Madhabi Venkatraman (hereafter “the original allottee”) applied on 29.08.2012 for allotment of a residential flat (No. 7013,

Sig(nhaturee Nroet Veariffiedter “the flat”) admeasuring 4545 sq. ft., in Nectarine Tower "PARX

Indu Marwah Date: 2021.07.22

ReLasoAn:

UREATE" at Sector- 108, Expressway, Noida. The flat was to be developed by

1In Consumer case No. 1183/2017, decided on 29-05-2019

the builder (Laureate). She paid the registration amount of ₹7,00,000/-. On 16.10.2012, an allotment letter was issued to the original allottee, for the flat after deposit of ₹32,33,657/- out of the total sale consideration of ₹2,47,29,405/-. According to the allotment letter, the possession of the flat was to be handed over within 36 months (from the date of allotment letter) i.e., latest by 15.10.2015. The original allottee made payment to the tune of ₹1,55,89,329/-, for the first seven instalments as demanded by Laureate. On 16.02.2015, after noticing the slow pace of construction, the original allottee decided to sell the flat. The purchaser who was in search of a residential flat was approached by her through a broker. He was assured that the possession of the flat would be delivered on time, and he agreed to purchase the flat and paid an amount of 1,00,000/- as advance towards the total sale consideration of ₹1,55,89,329/-. The purchaser and the original allottee agreed that the balance amount of sale consideration would be paid on or before 15.10.2015 and further that the purchaser would pay the outstanding instalments beyond

₹1,55,89,329/- directly after transfer of the flat to him. Demand letters for two instalments (Nos. 8 & 9) were issued by Laureate and payment to the tune of ₹21, 68,694/- was made by the original allottee.

3. The purchaser alleged that possession was not delivered in October, 2015 as promised (in the allotment letter). He decided to wait for the possession and not to make any payment towards the sale; however, the original allottee insisted upon the execution of an agreement to sell and demanded payment of instalments, which she had made to the builder, stating that she could not wait any further and she would forfeit the earnest money and cancel the deal. The purchaser alleged that he made enquiries from the officials of the builder, who assured that the possession would be delivered by June 2016. Therefore, the purchaser, on 17.02.2016, entered into an agreement of sale with the original allottee, and paid an amount of ₹1,85,00,000/-.

4. The original allottee on 02.04.2016, requested the builder to transfer the flat in favor of the respondent. The purchaser submitted an undertaking dated 01.04.2016 duly signed and executed by him, to the builder, Laureate. Later, Laureate issued a

letter dated 09.05.2016 to the purchaser, confirming the payment of ₹1,93,70,883/- towards the purchase of the flat. Thereafter, the purchaser visited the site to acquaint himself with the extent of

construction but he was denied entry to the construction site by the builder's employees citing security reasons and was informed that the work was in progress and possession would be delivered shortly. The purchaser alleges that he made telephonic inquiries from the office of the builder regarding possession, but unavailingly, without any result. He claims to have visited the builder's office in last week of January, 2017 and was informed that possession of the said flat could not be delivered till the end of year 2017.

5. After this, the purchaser sought for refund of the amount paid, from the builder. On 08.03.2017, a legal notice was issued to the builder asking for refund of the amount of ₹1,93,70,883/- with interest @ 24% p.a. from the various dates of deposit, was sought by the purchaser, but in vain. He claims to have been shocked to receive the demand letter for the 11th instalment for ₹10,92,628/-. On refusal of the payment of instalment, the officials of the builder threatened the purchaser of cancellation and forfeiture of the amounts paid. It is in these circumstances, that the appellant approached the NCDRC, for direction to the builder to refund the entire sum of ₹1,93,70,883/- with interest at the rate of 24% from the respective dates when the instalments were paid to Laureate. In addition, ₹ 5,00,000/- as compensation and

₹ 2,00,000/- as litigation expenses were sought along with other costs.

6. The builder, Laureate denied the claim, stating that for the period 28.03.2013 to January 2016, (i.e. 26 months), there was complete slowdown in the construction of the projects in all of NOIDA including the buildings in question, due to the order passed by National Green Tribunal (NGT) in OA/158/2013, and due to a notification issued by the Ministry of Environment, Forests and Climate Change. The original allottee was aware of the orders of the NGT, and the builder had sent several reminders for payment towards the instalments and finally issued a notice on 17.10.2014 for cancellation of the Provisional Allotment of Flat No. 7013. It was alleged that in view of Clause 13(7) of the agreement neither Ms. Madhabi

Venkatraman, the original allottee nor the purchaser-respondent who is endorsed by the original allottee was entitled to any amounts for delay in construction. It was also alleged that on 02.04.2016, the original allottee requested the builder to transfer flat No. 7013 in favour of the purchaser. The purchaser furnished an undertaking on 01.04.2016 duly signed before the competent authority, which makes it clear that both the original allottee and the purchaser were aware of the order of the NGT and the delay in construction were beyond the control of the purchaser. Therefore, their right to claim compensation is construed to be waived in terms of Clause 13.

7. The builder further alleged that on commencement of 18th floor and 20th floor roof slab, the 11th and 12th instalments were demanded from the Complainant and the same was not paid. Therefore, the builder had a right to cancel the allotment. It is only on account of the restrictive order dated 28.10.2013 passed by NGT on any construction within the radius of 10 kilometres from Okhla Bird Sanctuary, that the builder could not complete the project as the said project comes within the radius of 10 kilometres. In view of clause 13(5), the builder was entitled for extension of time for offer of possession at such premises on account of force majeure conditions. Therefore, it is not liable to pay any compensation.

8. The NCDRC, after considering the depositions of the parties, through affidavits, documentary evidence and the submissions of parties, noticed that the demand letter for the 11th instalment was dated 24.03.2017, whereas the promised date of delivery was 15.10.2015. That said letter stated that the construction stage 'on commencement of 18th floor roof slab' of the tower had

been achieved and therefore the 11th instalment was demanded to be paid. This showed that even as on 24.03.2017, the construction of the said tower was incomplete. The commission considered that Receipt No. 306 dated 01.03.2016 shows that the original allottee had paid an amount of ₹5,29,000/- towards penal interest charged by the Developer at the rate of 24% per annum. The NCDRC rejected the plea that the original allottee was a defaulter. It thereafter allowed the complaint, reasoning as follows:

"20. We find it a fit case to place reliance on the judgement of the Hon'ble Supreme Court in Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, II (2019) CPJ 29 (SC), wherein the Hon'ble Apex Court has clearly laid down that a flat purchaser cannot be made to wait indefinitely for seeking possession. Even in the instant case, though the promised date of delivery was way back in the year 2015, even as on date, the tower is far from completion.

21. The Learned Counsel for the Complainant relied on the decision of this Commission dated 11.01.2019 in Manmeet Singh & Anr. Vs. Unitech Hi-Tech Developers Ltd. & Ors. (Consumer Complaint No. 1285 of 2017), wherein this Commission has allowed refund of the principal amount with interest @ 10% p.a.

22. For all the aforenoted reasons and the principal laid down by the Hon'ble Supreme Court in Kolkata West International City Pvt. Ltd. (Supra) we are of the considered view that the Complaint be allowed in part and we direct the Developer to refund the amount deposited with the developer in respect of subject flat No. 7013 with interest @ 10%

p.a. from the respective dates of deposit till the date of realisation together with the cost of ₹25,000/."

Arguments of the parties

9. It is argued by Mr. Jayanth Mithras, learned senior counsel on behalf of the builder that the relief granted by NCDRC is unwarranted. Highlighting that the entire project had come to a standstill on account of an interim order by the NGT, the learned senior counsel stressed that these facts were within the knowledge of the original allottee as well as the purchaser. When they decided to purchase it in 2015, it was decided that the respondent would purchase the flat and step into the shoes of the original allottee. Learned senior counsel argued that given these circumstances, the respondent, as a prudent purchaser, could not have reasonably expected the construction to be completed till the interim orders were vacated and some time was allowed for the construction to be completed. Clearly, the purchaser was only an investor and was not interested in residing in the flat.

10. Learned senior counsel submitted that barely a year after the transaction of stepping into the shoes of the original allottee – which was endorsed by the builder, the purchaser made an unreasonable demand for the refund of the entire amount. At

that point in time, the interim order of the NGT had been vacated. Quite naturally, therefore, the construction had started and the builder made the demand on 23.04.2017 towards subsequent instalments which were not paid. Although the purchaser sent a legal notice prior to these demands, the fact remained that so long as he assumed responsibility as an allottee, he could not shy away from fulfilling the demand towards the instalments.

11. Learned senior counsel argued that the purchaser could not claim the equities in the same manner that an original allottee could. In the present case, the original allottee had not paid the instalments in time and was constrained to pay penal interest

– a fact noted by the NCDRC. In these circumstances, there were no equities compelling the NCDRC to grant any relief over and above a refund of compensation much less interest @ 10% from the period the deposits were made by the original allottee.

12. Learned senior counsel submits that since the complainant was not the original allottee but a subsequent purchaser, he could not claim any interest. He relied upon two rulings of this Court in HUDA v. Raje Ram2 and the recent judgment of this Court in Wing Commander Arifur Rahman Khan and Anr. v. DLF Southern Homes Pvt. Ltd.3. It is submitted that in both these cases, this Court had categorically ruled that when the allottee in a housing project transfers his or her rights in favour of another, such a third party cannot claim equities to the same extent as the original allottee, especially as regards a claim for interest. It was submitted by the learned senior counsel that there is a sound public policy rationale in support of such a rule which is that a subsequent purchaser is deemed to be aware of the nature of construction and the delay which occurred till the time he or she steps into the shoes of the allottee. The NCDRC overlooked these binding rulings and directed payment of interest for the entire period and clearly the respondent purchaser was not entitled to any interest at all.

2 2008 (17) SCC 407

3 2020 SCC Online 667 (SC)

13. Mr. M.L. Lahoty, learned counsel for the respondent urged this Court not to interfere with the findings and directions of the NCDRC. He highlighted that even if they were notified about the transfer by the original allottee in respect of the respondent, the builder had made demands towards penal interest, for various periods. A total amount of ₹ 5.9 lakhs was in fact paid during the period 01.03.2016 to 18.04.2016. The builder was made aware of the agreement to sell when its endorsement with respect to the transfer was sought. Further, it was only after receiving the amounts towards the so-called penal interest that the endorsement letter was ultimately issued on 09.05.2016 by the builder. This clearly confirmed

₹1,93,70,883/- was paid towards the flat. This endorsement letter also confirmed that the respondent purchaser would be entitled to the delivery of the flat.

14. It is submitted that the purchaser had entered into an understanding and paid the amounts towards the previous instalments as well as settled the later penal interest component to the original allottee and also paid penal interest upto October 2016. In these circumstances, it was not unreasonable for him to expect that project would be complete and the flat would be handed over

at least in the first part of 2017. However, upon visiting the site and noticing that there was practically no progress, the respondent/purchaser was constrained to move the NCDRC for the relief of direction of refunding the entire amount.

15. Mr. Lahoty pointed to the findings and observations of the NCDRC which had noticed the facts that although the NGT's interim order had subsisted for a while, and the builder had taken shelter under it to say that construction could not take place, the record indicated that the builder had sought for instalments from the original allottee, including demanding penal interest. Given these facts, there were no equities in favour of the builder; it was not open to it to claim that force majeure conditions operated and prevented it from going ahead with the construction.

16. It was submitted that upon the endorsement by the builder of all the transactions, and its acknowledgment, the purchaser had become entitled to seek delivery. There was no impediment in the purchaser claiming any kind of relief. Mr.

Lahoty submitted that if for instance, there were to be any defect or deficiency in service, the purchaser could not be discriminated against and an application or a plaint in that regard cannot be dismissed as not maintainable. Likewise, the mere fact that a subsequent purchaser steps into the shoes of an original allottee who might have at an earlier point of time sought allotment but because of the delay in the construction, being unable to withstand economic pressures withdrew, does not mean that the builder's default could be glossed over. Learned counsel urged that there is no rule or principle to support the judgment in Raje Ram (supra) or Wing Commander Arifur Rahman Khan and Anr. (supra) to say that subsequent purchasers should never be given the relief of interest on refunds. It was submitted that the refusal of the Court to grant relief have to be seen in the light of the peculiar circumstances of those cases.

Analysis and Conclusions:

17. The allotment letter dated 16.10.2012 assured the original allottee that the possession of the flat would be handed over within 36 months i.e. on or before 15.10.2015. The original allotee made payment to the tune of ₹1,55,89,329/-, towards the first seven instalments as and when demanded. Apparently, the allottee due to her own compulsions could not continue to wait indefinitely for delivery of the flat, having regard to the slow pace of construction. She therefore felt compelled to sell the flat. It was then that the purchaser stepped in, and an agreement to sell was executed between the parties on 17.02.2016. The original allottee thereafter approached the builder, informing it that the purchaser had stepped into her shoes and would continue with the obligations, and was therefore entitled to possession. Significantly, the builder endorsed and even required the purchaser to execute the letter of undertaking, which he did. With this development, the builder acknowledged that the rights and entitlements of the original allottee relation to the flat were assumed by the purchaser, and signified its obligations, correspondingly to the purchaser, as the consumer.

18. In the meanwhile, there was a slowdown in construction, apparently, on account of orders made by NGT. The builder alleged that the slowdown in construction was due to the NGT's interim

orders. However, what transpired was that on 28.10.2013, the NGT imposed certain restrictions within 10 km radius of the Okhla Bird Sanctuary. The application before the NGT was disposed on 03.04.2014. Consequently, there were no directions after that date. A review application was filed before the NGT which remained pending for some time; however, even at that stage there were no interim orders requiring stoppage of construction. On 19.08.2015 the Ministry of Environment and Forests issued a notification. The appellant is unclear as to the effect of this notification; apparently, it did not impede construction; the notification was challenged. It is only on 05.07.2016, on account of an application preferred by an occupant of an adjoining area that the NGT directed the builder not to carry on with the construction. This, the builder informs in its appeal, was finally disposed of in January 2016.

19. The facts set out in the preceding paragraph demonstrate that on the one hand the builder/appellant is not categorical with respect to the existence of interim orders enjoining it not to construct further. Rather, it appears that there was no construction of the project for about six months. However, despite this position, it continued to demand and received instalments. The purchaser entered the scene in 2016, waited for some time and demanded refund of the entire amount with interest from the dates that deposits were made. After receiving notice, the builder demanded further instalments. It was in this background that the purchaser approached the NCDRC successfully with the claim for refund. The claim for interest was allowed to the extent of 10% on the entire amounts deposited from the respective dates of deposits.

20. The principal argument of the builder is the rights of a purchaser are not the same as an original allottee. The builder appellant cites Raje Ram and Arifur Rahman Khan (supra).In the first decision Raje Ram, this Court declined to grant interest on a refund claim made by a subsequent purchaser. The original allottee did not continue with the allotment; the statutory authority/developer HUDA re-allotted

the plot. The re-allottee then approached the consumer forum which directed refund with interest. This court was of the opinion that when the subsequent purchaser, i.e. the re-allottee stepped into the shoes of the original allottee, he was aware of the delay in handing over the possession which had occurred and therefore could no longer claim the time of the delay. In Arifur Rahman Khan (supra) several allottees approached the Court. This Court did not grant relief to the subsequent purchasers who stepped into the shoes of the original allottees, citing Raje Ram.

21. The relevant discussion in Raje Ram is as follows:

“14. The appellants challenged the said orders of the State Commission contending that no interest was payable. The National Consumer Disputes Redressal Commission by its non-speaking orders dated 27-8- 2002, 30-9-2002 and 27-8-2002, disposed of the said revisions filed by the Development Authority, in terms of its earlier decision in HUDA v. Darsh Kumar [RP No. 1197 of 1998 decided on 31-8-2001 (NC)] by merely observing that it had upheld the award of interest up to 18% per annum in similar circumstances. The National Commission did not refer to or consider the facts of these cases. The said orders are challenged in these appeals by special leave. The common issue in all these cases is whether interest could have been awarded against the appellant, and if so whether the rate of interest is excessive.

15. The decision of the National Commission in Darsh Kumar [RP No. 1197 of 1998 decided on 31-8-2001 (NC)] , followed in the impugned orders, did not find favour of this Court in HUDA v. Darsh Kumar [(2005) 9 SCC 449] . This Court observed that (at SCC p. 451, para 7) where possession

is given at the old rate, the party has got the benefit of escalation in price of land, and therefore, there cannot and should not be award of interest on the amounts paid by the allottee on the ground of delay in allotment. On the special facts of that case, this Court however awarded compensation for harassment/mental agony.

16. The respondents in the three appeals are not the original allottees. They are re-allottees to whom reallotment was made by the appellant in the years 1994, 1997 and 1996 respectively. They were aware, when the plots were reallotted to them, that there was delay (either in forming the layout itself or delay in delivering the allotted plot on account of encroachment, etc). In spite of it, they took reallotment. Their cases cannot be compared to the cases of the original allottees who were made to wait for a decade or more for delivery and thus put to mental agony and harassment. They were aware that time for performance was

not stipulated as the essence of the contract and the original allottees had accepted the delay."

22. In Arifur Rahman Khan, the court observed as follows:

"43. Similarly, the three appellants who have transferred their title, right and interest in the apartments would not be entitled to the benefit of the present order since they have sold their interest in the apartments to third parties. The written submissions which have been filed before this Court indicate that "the two buyers stepped into the shoes of the first buyers" as a result of the assignment of rights and liabilities by the first buyer in favour of the second buyer. In HUDA v. Raje Ram [HUDA v. Raje Ram, (2008) 17 SCC 407 : (2009) 5 SCC (Civ)

889] , this Court while holding that a claim of compensation for delayed possession by subsequent transferees is unsustainable, observed that: (SCC p. 410, para 16)

"16. The respondents in the three appeals are not the original allottees. They are re-allottees to whom reallotment was made by the appellant in the years 1994, 1997 and 1996 respectively. They were aware, when the plots were reallotted to them, that there was delay (either in forming the layout itself or delay in delivering the allotted plot on account of encroachment, etc.). In spite of it, they took reallotment. Their cases cannot be compared to the cases of the original allottees who were made to wait for a decade or more for delivery and thus put to mental agony and harassment. They were aware that time for performance was not stipulated as the essence of the contract and the original allottees had accepted the delay."

Even if the three appellants who had transferred their interest in the apartments had continued to agitate on the issue of delay of possession, we are not inclined to accept the submission that the subsequent transferees can step into the shoes of the original buyer for the purpose of benefiting from this order. The subsequent transferees in spite of being aware of the delay in delivery of possession the flats, had purchased the interest in the apartments from the original buyers. Further, it cannot be said that the subsequent transferees suffered any agony and harassment comparable to that of the first buyers, as a result of the delay in the delivery of possession in order to be entitled to compensation."

23. The builder does not deny that upon issuance of the endorsement letter, the purchaser not only stepped into the shoes of the original allottee but also became entitled to receive possession of the flat. There is no denial that the purchaser fulfils the description of the complainant/ consumer and is entitled to move any forum under the Consumer Protection Act for any deficiency in service. The question then is whether a subsequent purchaser is not entitled to similar treatment as the original allottee, and can be denied relief which otherwise the original allottee would have been entitled to, had she or he continued with the arrangement. An individual such as the original allottee, enters into an agreement to purchase the flat in an on-going project where delivery is promised. The terms of the agreement as well as the assurance by the builder are that the flat would be made available within a time- frame. It is commonplace that in a large number of such transactions, allottees are not able to finance the flat but seek advances and funds from banks or financial institutions, to which they mortgage the property. The mortgage pay-outs start initially after an agreed period, commencing in a span of about 15 to 24 months after the agreement. This would mean that in most cases, allottees start repaying the bank or financial institutions with instalments (mostly equated monthly instalments) towards the principal and the interest spread over a period of time, even before the flats are ready. If these facts are taken into consideration, prolongation of the project would involve serious economic repercussions upon such original allottees who are on the one hand compelled to pay instalments and, in addition, quite often -if she or he is in want of a house -also pay monthly rents. Such burdens become almost intolerable. It is at this point that an indefinite wait is impossible and allottees prefer to find purchasers who might step into their shoes. That such purchasers take over the obligations of the original allottee – either to pay the balance instalments or to wait for sometime, would not per se exclude them from the description of a consumer. All that then happens is that the consumer forum or commission – or even courts have to examine the relative equities having regard to the time frame in each case.

24. In a larger five judge bench ruling in Economic Transport Organization v. Charan Spinning Mills (P) Ltd4, the question was whether an insurer, who honours its contract, and pays the insured the agreed money, in the event of an insurable incident such as an accident, can maintain a consumer complaint against the carrier, who is responsible for the accident. This court held that such complaints are not barred:

“29. In all three types of subrogation, the insurer can sue the wrongdoer in the name of the assured. This means that the insurer requests the assured to file the suit/complaint and has the option of joining as co-plaintiff. Alternatively, the insurer can obtain a special power of attorney from the assured and then to sue the wrongdoer in the name of the assured as his attorney.

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37. Whether the document executed by the assured in favour of the insurer is a subrogation simpliciter, or a subrogation-cum- assignment is relevant only in a dispute between the assured and the insurer. It may not be relevant for deciding the maintainability of a complaint under the Act. If the complaint is filed by the assured (who is the consumer), or by the assured represented by the insurer as its attorney holder, or by the assured and the insurer jointly as complainants, the complaint will be maintainable, if the presence of insurer is explained as being a subrogee. Whether the amount claimed is the total loss or only the amount for which the claim was settled would make no difference for the maintainability of the complaint, so long as the consumer is the complainant (either personally or represented by its attorney-holder) or is a co- complainant along with his subrogee.

38. On the other hand, if the assured (who is the consumer) is not the complainant, and the insurer alone files the complaint in its own name, the complaint will not be maintainable, as the insurer is not a "consumer", nor a person who answers the definition of "complainant" under the Act. The fact that it seeks to recover from the wrongdoer (service provider) only the amount paid to the assured and not any amount in excess of what was paid to the assured will also not make any difference, if the assured-consignor is not the complainant or co-complainant. The complaint will not be maintainable unless the requirements of the Act are fulfilled. The remedy under the Act being summary in nature, once the consumer is the complainant or is a co-complainant, it will not be necessary

for the Consumer Forum to probe the exact nature of relationship between the consumer (assured) and the insurer, in a complaint against the service provider.

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40. If in a summary proceedings by a consumer against a service provider, the insurer is added as a co-complainant or if the insurer represents the consumer as a power-of-attorney, there is no need to examine the nature of rights inter se between the consumer and his insurer. When the complaint is by the consignor-consumer, with or without the insurer as a co-complainant, the service provider cannot require the Consumer Forum to consider the nature of relationship between the assured and the insurer or the nature and true purport of the document produced as a letter of subrogation. A wrongdoer cannot side-track the issue before the Consumer Forum. Once the "consumer", that is the assured, is the complainant, the complaint will be maintainable subject to fulfilment of the requirements of the Act."

25. In another decision, Canara Bank v. United India Insurance Co. Ltd.5 the issue which this court had to consider was whether the insurer could repudiate liability in respect of a fire which destroyed farm produce kept in a cold storage, when the farmers had no privity with the insurer, but with the cold storage, and who availed credit on the security of the crop. The court held as follows:

"28. Taking the issue of privity of contract, we are of the considered view that as far as the Act is concerned, it is not necessary that there should be privity of contract between the Insurance Company and the claimants. The definition of "consumer" under Section 2(d) quoted hereinabove is in two parts. Sub-clause (i) of Section 2(1)(d) deals with a person who buys any goods and includes any user of such goods other than the person who buys such goods as long as the use is made with the approval of such person. Therefore, the definition of consumer even in the first part not only includes the person who has purchased but includes any user of the goods so long as such user is made with the approval of the person who has purchased the goods. As far as the definition of "consumer" in relation to hiring or availing of services is concerned, the definition, in our view, is much wider. In this part of the section, consumer includes not only the person who has hired or availed of the services but also includes any beneficiary of such services. Therefore, an insured could be a person who hires or avails of the

services of the Insurance Company but there could be many other persons who could be the beneficiaries of the services. It is not necessary that those beneficiaries should be parties to the contract of insurance. They are the consumers not because they are parties to the contract of insurance but because they are the beneficiaries of the policy taken out by the insured.

29. The definition of "consumer" under the Act is very wide and it includes beneficiaries who can take benefit of the insurance availed by the insured. As far as the present case is concerned, under the tripartite agreement entered between the Bank, the cold store and the farmers, the stock of the farmers was hypothecated as security with the Bank and the Bank had insisted that the said stock should be insured with a view to safeguard its interest.."

26. If one also considers the broad objective of the Consumer Protection Act, which is to provide for better protection of the interests of consumers and for that purpose, provide for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith, as evident from the Statement of Objects and Reasons of the Act. The Statement further seeks inter alia to promote and protect the rights of consumers such as—

"(a) The right to be protected against marketing of goods which are hazardous to life and property;

(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

(c) the right to be assured, wherever possible, access to variety of goods at competitive prices;

(d) the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;

(e) the right to seek redressal against unfair trade practice or unscrupulous exploitation of consumers; and

(f) right to consumer education."

27. In Lucknow Development Authority v. M.K. Gupta6 this Court held:

"The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, 'a network of rackets' or a society in which, 'producers have secured power' to 'rob the rest' and the might of public bodies which are

degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked."

28. It was further held that

"The Act thus aims to protect the economic interest of a consumer as understood in commercial sense as a purchaser of goods and in the larger sense of user of services. … It is a milestone in history of socio- economic legislation and is directed towards achieving public benefit."

29. This court has further observed in State of Karnataka v. Vishwabharathi House Building Coop. Society,7 that (the) "provisions of the said Act are required to be interpreted as broadly as possible. It has jurisdiction to entertain a complaint despite the fact that other forums/courts would also have jurisdiction to adjudicate upon the lis"8

30. It is therefore evident that the Consumer Protection Act, 1986 was conceived as a legislation to address complaints of consumers (an expression defined and interpreted widely) and provide a forum for their quick redressal, and, furthermore, wherever third parties have claimed relief, technicalities have been brushed aside consistently, by this court. Thus, even after an original consumer is indemnified for a fire accident, the insurer can maintain a complaint against the carrier/service provider, and claim damages (of course along with the insured party). Likewise, absence of privity of contract is not a bar for maintaining a complaint against a service provider, by a third party who suffers an incident, which is otherwise covered

6(1994) 1 SCC 243

7(2003) 2 SCC 412

8This court also relied on Fair Air Engineers (P) Ltd. v. N.K. Modi [(1996) 6 SCC 385] and Satpal Mohindra v. Surindra Timber Stores [(1999) 5 SCC 696

by an agreement. This court has also ruled, recently9 that proceedings initiated by complainants and resultant actions including of the NCDRC are fully saved by provisions of the Real Estate Regulatory Authority Act, 2019.

31. In view of these considerations, this court is of the opinion that the per se bar to the relief of interest on refund, enunciated by the decision in Raje Ram (supra) which was applied in Wg. Commander Arifur Rehman (supra) cannot be considered good law. The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent. However, it cannot be said that a subsequent purchaser who steps into the shoes of an original allottee of a housing project in which the builder has not honoured its commitment to deliver the flat within a stipulated time, cannot expect any – even reasonable time, for the performance of the builder's obligation. Such a conclusion would be arbitrary, given that there may be a large number- possibly thousands of flat buyers, waiting for their promised flats or residences; they surely would be entitled to all reliefs

under the Act. In such case, a purchaser who no doubt enters the picture later surely belongs to the same class. Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he has knowledge of, at the time of purchase of the flat. Therefore, in the event the purchaser claims refund, on an assessment that he too can (like the original allottee) no longer wait, and face intolerable burdens, the equities would have to be moulded. It would no doubt be fair to assume that the purchaser had knowledge of the delay. However, to attribute knowledge that such delay would continue indefinitely, based on an a priori assumption, would not be justified. The equities, in the opinion of this court, can properly be moulded by directing refund of the principal amounts, with interest @ 9% per annum from the date the builder acquired knowledge of the transfer, or acknowledged it.

32. In the present case, there is material on the record suggestive of the circumstance that even as on the date of presentation of the present appeal, the

9Imperia Structures Ltd. v. Anil Patni, (2020) 10 SCC 783

occupancy certificate was not forthcoming. In these circumstances, given that the purchaser/respondent had stepped into the shoes of the original allottee, and intimated Laureate about this fact in April 2016, the interests of justice demand that interest at least from that date should be granted, in favour of the respondent. The directions of the NCDRC are accordingly modified in the above terms.

33. The impugned order of the NCDRC is modified in the above terms; the appeal is partly allowed. There shall be no order on costs.

……J [UDAY UMESH LALIT]

……J [HEMANT GUPTA]

……J [S. RAVINDRA BHAT]

New Delhi, July 22, 2021.