III (2018) CPJ 12 (NC)

NATIONAL CONSUMER DISPUTES

REDRESSAL COMMISSION, NEW DELHI

Hon'ble Mr. Justice D.K. Jain, President & Mrs. M. Shreesha, Member

ITTINA PROPERTIES PVT. LTD. & ORS.—Appellants

versus

VIDYA RAGHUPATHI & ANR., SUJEESH T. & ORS., SUSAMTA MOHANTY & ORS., LUMMILA BARRY SHANGH, SOOREJ S.R. & ORS., SARAVANAN & ANR., CHANDRA MOHAN K.S. & ORS.—Respondents

First Appeal Nos. 1787 to 1793 of 2016 & 464 to 469 of 2018 against Order dated 8.1.2016 in Complaint Nos. 6 of 2012 & 248, 249 of 2010 and 42, 71, 72, 152 of 2011 of Karnataka StateConsumer Disputes Redressal Commission with IA No. 13197/2016 (Stay), IA/13198/2016 (Exemption for filing Official Translation); IA No. 13199/2016 (Stay), IA/13200/2016 (Exemption for filing Official Translation); IA No. 13201/2016 (Stay), IA/13202/2016 (Exemption for filing Official Translation); IA No. 13203/2016 (Stay), IA/13204/2016 (Exemption for filing Official Translation); IA No. 13205/2016 (Stay), IA/13206/2016 (Exemption for filing Official Translation); IA No. 13207/2016 (Stay), IA/13208/2016 (Exemption for filing Official Translation) —Decided on 31.5.2018

Consumer Protection Act, 1986 — Sections 2(1)(g), 14(1)(d), 21(a)(ii) — Housing — Illegal Construction — Necessary approval and sanction not taken — Execution of sale deed — Non-delivery of possession — Deficiency in service — State Commission partly allowed complaint — Hence appeal — Sale deeds were executed in year 2006 and by 2009 Completion Certificate was not issued — Occupancy Certificate was issued only on 25.9.2017 during pendency of these appeals before this Commission — Allotting Plots or apartments before procuring relevant sanctions and approvals is *per se* deficiency — Sale deeds were executed way back in year 2006 whereas Commissioner's report clearly records that BDA had sanctioned plan for construction of additional floors *vide* a letter dated 22.12.2007 — Copy of consent given by Karnataka State Pollution Board is dated 12.4.2012 (6 years after date of execution of sale deed)—Permission granted by Deputy Chief Engineer to install lifts in different blocks is dated 11.2.2013 and Completion Certificate was issued by Gram Panchayat in respect of 1024 apartments on 21.2.2009, which dates evidence that the requisite sanctions and approvals were not in place prior to offer of possession in year 2009 — Direction of State Commission to pay interest on amounts deposited by complainants from date of delivery till date of handing over of apartments cannot be said to be illegal — Complainants entitled to interest @ 10% p.a. on deposited amount.

[Paras 17, 18]

Result : Appeals partly allowed.

Cases referred:

1. ***Faqir Chand Gulati*** v. ***Uppal Agencies Pvt. Ltd. & Anr.,*** III (2008) CPJ 48 (SC). *(Relied)* *[Para 16]*

2. ***Brig. (Retd.) Kamal Sood*** v. ***M/s. DLF Universal Ltd.,*** III (2007) CPJ 7 (NC). *(Relied)* *[Para 16]*

3. ***Chhaya Pradeep Bavadekar & Ors.*** v. ***M/s. Kamla Ankur Developers,*** (2015) CC. No. 622/2015. *(Referred)* *[Para 19]*

4. ***T.V. Sundram Iyenger & Sons Ltd.*** v. ***Muthuswamy Duraiswamy***, II (2003) CPJ 176 (NC). *(Referred)* *[Para 19]*

Counsel for the Parties:

For the Appellants *in FA/1784-1794/2016* : ***Mr. J. Krishna Dev, Advocate.***

In FA/464-469 and 616/2018 : ***Mr. Sudeepta Kumar Pal, Advocate.***

For the Respondents *in FA/1784-1794/2016* : ***Mr. Sudeepta Kumar Pal, Advocate.***

ORDER

Mrs. M. Shreesha, Member—Aggrieved by the order dated 8.1.2016 in Consumer Complaint Nos. 248 and 249 of 2010, Consumer Complaint Nos. 42, 71, 72, 152 and 185 of 2011 andConsumer Complaint No. 6 of 2012 passed by the Karnataka State Commission Redressal Commission, Bengaluru (in short "the State Commission"), Opposite Parties 1 to 4 have preferred Appeal Nos. 1787 to 1793 of 2016 and the Complainants have preferred Appeal Nos. 464 to 469 and 616 of 2018 under Section 19 of the Consumer Protection Act, 1986 (in short "the Act"). By the impugned order, the State Commission has directed the Opposite Parties to execute a registered sale deed in favour of the Complainants, within 45 days from the date of receipt of the order and also directed the Opposite Parties jointly and severally to complete the project in accordance with the sanctioned plan and to hand over the possession of the properties with the Occupancy Certificate issued by the competent authority by providing all amenities as promised in the Agreement and the Brochure. The Opposite Parties were also directed to pay interest @ 18% p.a. on the amount paid by the Complainants from the date of default till the date of handing over of the possession of the flats, together with the EMIs specified in the respective Consumer Complaints. In Consumer Complaint No. 248 of 2010, an amount of 1,78,068 was also directed to be paid towards the furniture. The Opposite Parties were further directed to pay costs of Rs. 25,000 to each of the Complainants. The State Commission has dismissed the Complaints against M/s. Lalita Developers in all the cases.

2. Since all these Appeals arise out of a common impugned order, they are being disposed of by this common order.

3. The facts in brief are that the Complainants, attracted by the assurances made by the Opposite Parties, booked flats of their choice in the project floated in the name and style of "Ittina Mahaveer, situated at Doddatoguru Village, Begur Hobli, Bangalore South

Taluk. The Complainants made these bookings in the year 2005, 2006 and in 2008 and paid the amounts in lump sum, the details of which are given hereunder:

Complaint No.	Flat No.	Agreement of sale dated	Sale deed dated	Total sale consideration	Agreed date to handover the possession on/before	Amount paid by the Complainants	Pre-EMI amount
248/2010	E-101	27.4.06	31.5.06	23,76,000	Sep-2006	23,76,000	49,545
249/2010	N-204	27.8.05	17.1.06	19,84,350	May-2006	19,84,350	8,720
42/2011	O-306	7.4.06	——	24,43,000	Sep-2006	23,00,000	——
71/2011	I-102	28.11.05	17.12.05	17,85,665	May-2006	14,73,179	4,70,443
72/2011	G-103	11.8.05	19.8.08	17,27,550	May-2006	15,58,850	——
152/2011	M-103	22.12.05	9.1.06	18,44,350	Sep-2006	15,75,210	4,40,930
185/2011	I-505	23.5.08	26.7.08	31,00,000	30.9.08	27,00,000	——
6/2012	F-311	24.1.06	5.5.06	21,69,860	May-2006	17,75,000	4,32,651

4. It was averred that as per Clause 7 of the Sale Agreement, the said Apartments were to be handed over to the Complainants together with all the common amenities namely, Lift, Terrace Area, Parking, Health Club, Gym, Open Air Theatre, VSAT,

Intercom, Sewage, Recycling Plant, Mechanized Car Facility, Swimming Pool, Tennis Court, Basket Ball Court, Children Play Area, Recreational Park, Jogging Track, etc. It was stated that the work did not start as per schedule but demand for payments were made and on failure to pay the demanded amounts, the Opposite Parties imposed 21% interest on the delayed payments. It was promised that the Opposite Parties shall deliver the subject properties within the stipulated time as agreed, failing which the Opposite Parties shall pay to the Complainants interest @ 21% p.a. for every month's delay, as mentioned in Clause 8 of the Agreement. The Complainants averred that they had paid amounts towards car parking and common amenities, including the registration charges. It was pleaded that the total sale consideration of the Apartments was inclusive of all taxes and the same was expressly mentioned in the booking forms. It was stated that the sale deeds were executed in the name of the Complainants on the aforenoted dates, except in Consumer Complaint No. 42 of 2011.

5. It was averred that on 30.7.2006, Bangalore Development Authority (BDA) issued a press release cautioning the citizens from purchasing flats or Apartments from the said Opposite Parties as they had violated the sanctioned plans. It was pleaded that even as on the date of the filing of the Complaints, the Apartments were not complete, on account of which, the Complainants suffered loss of rents and mental agony as they had made several personal visits and also communicated *vide* notices and e-mails. Despite several such requests, there was no response from the Opposite Parties with respect to the completion of the Apartments and all the promised amenities. Hence the Complainants approached the State Commission in 2011 seeking the following reliefs:

> "1. Direct the Opposite Parties jointly and severally to complete the construction by providing all basic and general amenities in accordance with the agreement executed, and hand over the ready to live apartment to the complainant along with occupancy certificate immediately or with the reasonable time as this Court may fix of in alternative OPs may be directed to refund Rs. 17,75,000 (Rupees seventeen lakh seventy five thousand only) to the Complainant in the interest of justice and equity.
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> 2. Direct the OPs jointly and severally to pay 21% interest as agreed upon on 17,75,000 (Rupees seventeen lakh seventy five thousand only) which is the amount paid by the complainant*vide* Clause 8 of the sale agreement which amounts to Rs. 17,39,500 (Seventeen lakh thirty nine thousand and five hundred only), for the delay in handing over the apartment to the complainant and direct them to pay the said interest till the date of its due realization.
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> 3. Direct the OPs jointly and severally to pay the agreed Pre-EMI and till possession of Rs. 4,32,651 (Rupees four lakh thirty two thousand six hundred and fifty only), till date as agreed upon by them in the letter dated 22.2.2008 .
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> 4. Direct the OPs to pay an amount of Rs. 1,00,000 towards punitive damages to be payable to Consumer Welfare Fund or to the State.

5. Direct the opposite party to reimburse costs of this proceeding including any additional costs against the Honourable Commission deems fit and proper in the nature and circumstances of the case and in the interest of justice and equity."

6. Opposite Parties 1 to 4 filed their Written Version stating that the first Opposite Party is a Private Limited Company, the second Opposite Party was relieved from the directorship of the Company on 17.4.2010, the third Opposite Party is the present Director of the Company and the fourth Opposite Party is not a full time Director. It was averred that the Complainants were defaulters and that it was only on account of non-payment by the Complainants that there was a delay in handing over of the flats on the agreed dates. It was further pleaded that the State Government had widened the road from 40 feet to 60 feet by virtue of the Notification dated 24.12.2004 and the Opposite Parties had submitted an Application for sanction of the 4th and 5th floors on 11.3.2005. This Application for sanction of the 4th and 5th floors was not considered for more than 6 months and therefore the Opposite parties were constrained to file a Writ Petition before the Hon'ble High Court in W.P. 7266 of 2007. The said petition came to be disposed of on 2.5.2007 directing the Respondents therein to consider the said Application. Thereafter, the Opposite Parties were once again constrained to file Contempt Petition before the Hon'ble High Court in CC No. 614 of 2007. Bangalore Development Authority (BDA) had agreed to consider the Building Plan and the Petition came to be disposed of *vide* order dated 3.12.2007. It was pleaded that the period from 13.7.2006 till the actual date on which the plan was sanctioned *i.e.*November, 2008, has to be deducted from the agreed period as there was no intentional delay on the part of the Opposite Parties in delivering the possession of the properties. Therefore the question of paying compensation in the form of rents/interests at the rate of 24% did not arise at all.

7. The fourth Opposite Party in Consumer Complaint No. 249 of 2010 and the fifth Opposite Party in other Complaints namely M/s. Lalita Developers filed their Written Version contending that they are only land owners and that the alleged Agreement is not binding on them as they were never a party to the subject Agreement.

8. The State Commission allowed the Complaint in part with the aforenoted directions observing as follows:

"21. In support of this, complainants' Counsel agreed that at the time of booking only 3 floors were shown. But, now has constructed 5 floors. So the building with additional floors will diminish the value of the building, flats become congested and this reduces the amenities also and the same is against their own brochure.

22. Thus, before obtaining statutory clearances, *i.e.* sanction of construction, approvals and other relevant documents, if the builder issues tempting brochures, offers, promises and advertises to deliver the possession of the constructed flat within stipulated period, then the fault lies with builder. For this delay, the complainants are not responsible and they are not liable to pay any penal interest. So as per Clause 8 of the Sale Agreement complainants are

entitled to get claim interest at the rate of 21% p.a. for every month's delay. But, as per agreement interest at the rate of 21% p.a. is the higher side, even though it is a contractual obligation. Hence, it would be just and proper to award at the rate of 185 p.a. from the date of default till handing over of possession. This rate of interest of 18% p.a. also covers the rent aspect, mental agony and harassment.

23. In some complaints OPs agreed to pay the pre-EMIs to the complainants at the time of handing over possession by writing a letter to the Complainants. Hence, complainants are also entitled to claim pre-EMIs from OPs.

24. In C.C. No. 248/2010 the Commissioner is appointed to report status and position of the apartment and other civic amenities. The Commissioner has submitted the report and the Complainant's Counsel files the objections to the report with photographs. The Counsel has objected the Commissioner report on the ground that the memo of instructions given by the Complainant has not been followed. We have gone through the Commissioner's Report and objections. It is seen that Commissioner has not followed the memo of instructions while submitting the report. Hence, the Commissioner's report is not considered. In C.C. No. 248/2010 the Complainant has produced the cheque bearing No. 119547 issued by the 2nd OP for a sum of Rs. 1,00,000 towards the part refund made to the complainant, but, the said cheque was dishonoured and it is reflected in the statement of account submitted by the complainant. Hence, complainant is entitled to claim refund of Rs. 1,78,068 from OPs.

25. The owner had executed the SPA deed in favour of the builder to transfer the undivided share in the land only and not for other purposes. The copy of the booking form, receipts and e-mail correspondence reveals the fact that complainants have made all payments to OPs and substantial amount has been received by the OPs except Lalitha Developers only. So Lalitha Developers have not received any consideration amount from the complainants and there are no transactions between complainants and Lalitha Developers. Moreover, complainants have no grievance against the Lalitha Developers. Thus, OP is not liable to answer any claim of the complainants."

9. Learned Counsel appearing for the Developer submitted that the complaints were time barred; that as per Agreement of Sale dated 24.1.2006, the first Appellant was to deliver the possession on or before May, 2006, subject to the Complainants complying with all the contractual obligations including paying the full consideration as stipulated in the Agreement; that the Complainants ought to have filed the Complaints within two years from June, 2006 but they choose to remain silent during the entire period and therefore the Complaints were barred by limitation; that the Gram Panchayat issued the Completion Certificate on 22.1.2009 and in November, 2009, upon completion of the project, the customers began taking possession of their respective Apartments; on 23.3.2009 itself a letter was addressed to the Complainant in Complaint No. 6 of 2012 informing her that the Apartment was ready for possession and to pay the remaining dues of Rs. 7,70,383; but instead the Complainant preferred to approach the State

Commission. Learned Counsel further argued that the State Commission has erred in discarding the Advocates Commissioner's report dated 10.11.2014 and in not appointing another Commissioner to determine the status of the Apartments; that the State Commission has wrongly calculated that there was a delay of more than 7 to 9 years in handing over of the possession of the Apartments without appreciating the cogent evidence that has been placed on record; that the State Commission has erred in awarding interest at a uniform rate of 18% p.a. in all the Complaints without taking into consideration the specific facts in each case *i.e.* the amounts which were due from the Complainants was not addressed to; that the sanction of the plan by BDA on 6.2.2008, constitutes a *force majeure* event as stipulated in Clause 8 of the Agreement; that BDA granted sanction of the building plan for basement, ground plus three floors with the road width of 40 feet which was later widened by G.O. dated 24.4.2004 to 60 feet and therefore sanction of 4th and 5th floors was sought for; despite moving an Application before the BDA for modification of the previously sanctioned building plan, BDA issued a press release dated 13.7.2006 cautioning the citizens not to purchase the said Apartments.

10. Learned Counsel representing the Developer filed an Additional Affidavit stating that once the BDA became the 'Planning Authority', in terms of Sections 14 and 15 of the Country Planning Act, the Appellant Company was required to apply to and be granted the requisite permission from the BDA prior to commencing the construction of the Project. The relevant portions of Sections 14 and 15 of the Country Planning Act are extracted as under:

> "14. *Enforcement of the Master Plan and the Regulations*—(1) On and from the date on which a declaration of intention to prepare a Master Plan is published under Sub-section (1) of Section 10, every land use, every change in land use and every development in the area covered by the plan subjection to Section 14-A shall conform to the provisions of this Act, the Master Plan and the Report, as finally approved by the State Government under Sub-section (3) of Section 13.
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> (2) No such change in land use or development as is referred to in Sub-section (1) shall be made except with the written permission of the Planning Authority which shall be contained in a commencement certificate granted by the Planning Auhtority in the form prescribed;
>
> *Explanation*—For the purpose of this section—
>
> 1. The expression "development" means the carrying out of building or other operation in or over or under any land or the making of any material change in the use of any building or other land…"
>
> 15. *Permission for development of building or land*—(1) On receipt of the application for permission under Section 14, the Planning Authority shall furnish to the applicant a written acknowledgement of its receipt and after such inquiry as may be necessary either grant or refuse a commencement certificate:

Provided that such certificate may be granted subject to such general or special conditions as the State Government may, by order made in this behalf, direct—

(2) If the Planning Authority does not communicate its decision to the applicant within three months from the date of such acknowledgement, such certificate shall be deemed to have been granted to the applicant…."

Accordingly, the Building Plan of the Appellant Company (including the Modified Building Plan) was sanctioned by the BDA. Additionally, in view of the fact that 'Local Authority' continued to be the Doddatoguru Gram Panchayat, at their insistence, the Appellant Company had additionally taken permission for construction of the project from the Gram Panchayat, as required under Section 64 of the Panchayat Raj Act.

11. It was argued that notwithstanding the fact that there was no specific statutory provision regarding issuance of a Completion Certificate either under the Town and Country Planning Act or under the Bangalore Development Authority Act, 1976 or the Panchayat Raj Act, for all practical purposes, the same was obtained on 22.1.2009 from the concerned local authority, which was the Gram Panchayat in the present case. Learned Counsel submitted that the Project was within the limits of the Doddathogur Gram Panchayat and the same does not fall within the jurisdictional limits of the Municipal Corporation *i.e.* the Bruhat Bengaloure Mahanagara Palike, and hence the Municipal Corporation Act was inapplicable and relied on House (Property) Tax receipts of the Apartments. He submitted that the said Completion Certificate issued by the Gram Panchayat should be construed as sufficient.

12. Insofar as the question of Occupancy Certificate is concerned, notwithstanding the fact that the Country Planning Act or the BDA Act does not have a specific provision to grant the same, by way of abundant caution and in accordance with the conditions stipulated in the sanction of the Building Plan dated 6.2.2008, and since the BDA was the 'Planning Authority', who had sanctioned the Building Plan in respect of the Project, the Appellant company also applied to the BDA on 5.1.2009 for grant of permission to occupy the Project. However, no response has been received from the BDA with respect to this Application, despite a reminder letter sent on 12.12.2011.

13. Learned Counsel representing the Complainants vehemently argued that the Completion Certificate given by the Gram Panchayat was not sufficient and that the Occupancy Certificate had to be obtained from the BDA and it was only because the entire project was not completed by the year 2017, that the Developer could not obtain the Occupancy Certificate. Section 300 of the Karnataka Municipal Corporation Act, 1976 strictly prohibited commencement of any building work without necessary permissions. He argued that the construction or reconstruction of a building could not begin unless and until the Commissioner had granted permission for the execution of the work. He drew our attention to Section 310 of the Municipal Corporation Act which is extracted as under:

"310. *Completion Certificate and Permission to occupy or use*—(1) Every person shall within one month after the completion of the erection or a building

or the execution of any such work, deliver or send or cause to be delivered or sent to the Commissioner at his office notice in writing of such completion, accompanied by a certificate in the form prescribed in the bye-laws signed and subscribed in the manner prescribed and shall give to the Commissioner all necessary facilities for the inspection of such buildings or of such work and shall apply for permission to occupy the building.

(2) No person shall occupy or permit to be occupied any such building, or part of the building or use or permit to be used the building or part thereof affected by any work, until

(a) permission has been received from the Commissioner in this behalf; or

(b) the Commissioner has failed for thirty days after receipt of the notice of completion to intimate his refusal of the said permission."

14. The contention of the learned Counsel for the developer that as per the Bye-laws, only Completion Certificate is required and that the Occupation Certificate is not mandatory is unsustainable in the light of Bye-law No. 5.6 of the Bangalore Mahanagara Palike Building Bye-laws, 2003 which deals with the issue of Occupancy Certificate and clearly stipulates that every person shall before the expiry of 5 years from the date of issue of licence complete the construction or reconstruction of the building for which the licence was obtained and within one month after the completion of the erection of the building shall send intimation to the Commissioner in writing of such completion, accompanied by the certificate in Schedule VIII certified by Architect/ Engineer/ Supervisor and shall apply for permission to occupy the building. The Authority shall decide after due physical inspection of the building (including whether the owner had obtained commencement certificate as per Section 300 of the Karnataka Municipals Corporations Act, 1976 and compliance regarding production of all required documents) and intimate the applicant within 30 days of the receipt of the intimation whether the application for Occupancy Certificate is accepted or rejected. It is clearly stated in Bye-law 5.6 (b) that physical inspection means the Authority shall find out whether the building has been constructed in all respects as per the sanctioned plan and requirements of the building Bye-laws.

15. The Court Commissioner, after inspecting the subject property on 3.11.2014, issued a report that he was satisfied with the available amenities namely, water, electricity, sewage etc. and also that the common amenities were in working condition and further concluded that there was a delay in construction and delivery of possession. Learned State Commission has taken into consideration the objections filed by the Complainants to the Commissioner's report, that the Memo of Inspection given by the Complainants has not been followed, and gave a finding that the Commissioner has submitted his report in violation of the Memo of Inspection. Be that as it may, it is an admitted fact that the sale deeds were executed during the years 2005-2008, when the subject project did not have the necessary sanctions which was in complete violation of what has been laid down by the Hon'ble Supreme Court in a catena of judgments.

16. The Hon'ble Apex Supreme Court in ***Faqir Chand Gulati*** v. ***Uppal Agencies Pvt. Ltd. & Anr.,*** III (2008) CPJ 48 (SC), has observed that a prayer for completion certificate and C & D Forms cannot be brushed aside by stating that the builder has already applied for the completion certificate or C & D Forms. If it is not issued, the builder owes a duty to make necessary application and obtain it. If it is wrongly withheld, he may have to approach the appropriate Court or other Forum to secure it. If it is justifiably withheld or refused, necessarily the builder will have to do whatever that is required to be done to bring the building in consonance with the sanctioned plan so that the municipal authorities can inspect and issue the completion certificate and also assess the property to tax. If the builder fails to do so, he will be liable to compensate the complainant for all loss/damage. This Commission in ***Brig. (Retd.) Kamal Sood*** v. ***M/s. DLF Universal Ltd.,*** III (2007) CPJ 7 (NC)=(2007) SCC Online NCDRC 28, has observed that it is unfair trade practice on the part of the Builder to collect money from the perspective buyers without obtaining the required permission and that it is duty of the Builder to first obtain the requisite permissions and sanctions and only thereafter collect the consideration money from the purchasers.

17. It is an admitted fact that the sale deeds were executed in the year 2006 and by 2009 the completion certificate was not issued. The Occupancy Certificate was issued only on 25.9.2017during the pendency of these Appeals before this Commission. Allotting Plots or Apartments before procuring the relevant sanctions and approvals is *per se* deficiency and in the instant case it is pertinent to note that even the sale deeds were executed much prior to the delivery of possession. It is interesting to note that in the reply notice dated 18.8.2011, the Developer admitted that Painting and Sanitary fixing and some other works were still pending and that possession will be offered thereafter. When the demand for the balance sale consideration was made, the Complainants replied that the payment schedule was as per the stages of construction and that when the possession itself had still not been delivered, the question of payment of any balance amounts did not arise, specifically in the light of Clause 8 of the Agreement, it is the Developer who has to pay the Complainants the penalty interest for the admitted delay.

18. At the cost of repetition, it is observed that the sale deeds were executed way back in the year 2006 whereas the Commissioner's report clearly records that BDA had sanctioned the plan for construction of additional floors *vide* a letter dated 22.12.2007; copy of the consent given by Karnataka State Pollution Board is dated 12.4.2012 (6 years after the date of execution of sale deed); permission granted by the Deputy Chief Engineer to install lifts in different blocks is dated 11.2.2013 and the completion certificate was issued by the Gram Panchayat in respect of 1024 Apartments on 21.2.2009, which dates evidence that the requisite sanctions and approvals were not in place prior to the offer of possession in the year 2009. It is relevant to note that the Opposite Parties have applied for the Occupancy Certificate only on 5.1.2009 and a reminder was sent in the year 2011 after remaining silent for two long years. Having regard to the fact that BDA itself issued a paper notification on 13.7.2006 cautioning the purchasers that all further constructions of the Opposite Parties was stopped as they had

indulged in illegal construction in violation of the sanctioned plans and taking into consideration that the possession were also given only after an inordinate delay of 7 to 9 years and further that Clause 8 of the Agreement stipulates that unless limited by "*Force Majeure*" causes, the developer shall pay interest @ 21% p.a. for every month's delay to the purchaser, we are of the considered view that the direction of the State Commission to pay interest on the amounts deposited by the Complainants from the date of delivery till the date of handing over of the Apartments cannot be said to be illegal. However, the point that falls for consideration here is whether the State Commission was justified in awarding interest @ 18% p.a. when the Hon'ble Apex Court has decided in a catena of judgments that having regard to the lower Bank rates, in cases of delayed delivery of possession, the purchasers are entitled to interest @ 10% p.a. on the deposited amounts.

19. The Complainants have also preferred Cross Appeals and learned Counsel appearing for the Complainants argued that the interest rate ought to be awarded at 21% as stipulated in Clause 8 of the Agreement and that the State Commission ought to have directed payment of interest from the date of default till the date of issuance of the Occupancy Certificate. Learned Counsel relied on the judgement of this Commission in ***Chhaya Pradeep Bavadekar & Ors.*** v. ***M/s. Kamla Ankur Developers,*** (2015) CC. No. 622/2015, wherein it was held that it id a legal obligation of the Developer to obtain the requisite Occupancy Certificate before delivering the possession of the flat to the buyer. No flat can be legally offered for being occupied by the Purchaser without obtaining the requisite Occupancy Certificate nor can the purchaser legally occupy the flat without such a certificate. He further argued that this Commission has laid down the ratio in ***T.V. Sundram Iyenger & Sons Ltd.*** v. ***Muthuswamy Duraiswamy***, II (2003) CPJ 176 (NC), that the Court cannot go against the terms of contract entered into between the parties, unless terms are illegal and contract void and therefore the State Commission ought to have awarded interest @ 21% p.a. as stipulated in the contract instead of reducing it to 18% p.a. without taking into consideration the terms and conditions of the Agreement. He vehemently contended that the date should be extended till the date on which the Occupancy Certificate was obtained by the Developer. The submission of the learned Counsel that 21% interest rate is the contractual obligation and therefore the State Commission should have awarded interest at the said rate is not sustainable in the light of the fact that some amounts towards balance sale consideration was also due from some of the purchasers/ Complainant. It is pertinent to note that the Commissioner's Report dated 10.11.2014 clearly states that the Apartments were in a habitable condition and that there were some dues to be paid by the Complainants. It is also relevant to mention here that if interest @ 18% p.a. is awarded, the Complainants would enrich themselves to the extent that apart from retaining the flats, they would receive much more than what they had actually paid for the subject flats.

20. In view of the aforegoing discussion and particularly the delay which had occurred in the handing over of the possession of the Apartments, it needs little emphasis that the Developer has committed an act of deficiency of service in executing the sale deeds without the necessary sanctions and belatedly obtaining the Occupancy Certificate

on 25.9.2017, 10 years after the promised date of delivery. We are, therefore, of the considered opinion that the Complainants deserve to be compensated for the said delay. Taking into consideration that the Complainants have received possession and that the Occupancy Certificate has also been issued, though belatedly, we are of the considered view that the interest @ 18% p.a. awarded by the State commission is excessive and the same deserves to be reduced to 10% p.a. This interest @ 10% p.a. is being awarded considering the recent decline in the cost of borrowing and return on the investments made with the Banks. Further, the Hon'ble Supreme Court in catena of judgments has awarded interest @ 10% p.a. to be paid by the Developer to the purchasers where the issue for consideration was delayed possession. The Hon'ble Apex Court has observed that the Banks have lowered the interest rates and awarding interest @ 10% p.a. would meet the ends of justice. However, the period of payment of interest is modified and the Developer is directed to pay to the Complainants interest @ 10% p.a. from the promised date of delivery of possession till the date the Occupancy Certificate was issued. It is also seen from the statement of account that there are some amounts due against the total sale consideration. If that is so, these amounts shall be deducted by the Developer before making the necessary payments to the Complainants. It is clarified that no interest shall be charged on the balance payments due as the payment was to be made based on the stages of construction and further there was also a delay in the delivery of possession of the subject flats.

21. Hence, the Appeals preferred by the Complainants are allowed in part to the extent of the period of payment of interest and the Appeals preferred by the Opposite Parties are allowed in part reducing the rate of interest from 18% p.a. to 10% p.a. and also to the extent of deduction of the principal amounts which are due to be paid by the Complainants. The rest of the order of the State Commission stands confirmed. *Vide* order dated 2.3.2017, this Commission has directed the Developer to comply with all the directions contained in para No. 26 of the impugned order and has stayed only the operation of the direction with regard to the payment of interest @ 18% p.a. on the amounts deposited by the Complainants. Needless to add, if any amounts have been paid, the same shall stand adjusted from the decretal amount. The aforenoted amounts shall be paid within six weeks from the date of receipt of a copy of this order, failing which the amount shall attract interest @ 12% p.a. from the promised date of delivery of possession till the date of realisation.

22. In the result, all these Appeals are allowed in part to the extent indicated above. No order as to costs.

23. The statutory amounts deposited in First Appeal Nos. 1787 to 1793 of 2016 shall stand refunded to the Appellants.

Appeals partly allowed.
