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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 12.12.2023***+ **CM(M) 1236/2022****M/S TDI INFRASTRUCTURE LTD** PetitionerThrough: **Ms.Kanika Agnihotri and
Mr.Gandharv Garg, Advs.**

versus

SUKHPAL SINGH BHULLAR & ANR. RespondentsThrough: **Mr.Yadvinder Singh Dhillon,
Adv.****CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed challenging the Order dated 15.09.2022 passed by the learned National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as 'NCDRC') in First Appeal No. 180/2019, titled ***M/s Taneja Developers and Infrastructure Ltd. v. Sukhpal Singh Bhullar & Anr.***, whereby the learned NCDRC has been pleased to dismiss the said appeal filed by the petitioner herein, and pass the following directions:

"17. Clearly the appeal is without substance, bereft of any worth. The same stands dismissed with the following directions:



(i) *The impugned Order dated 14.09.2018 of the State Commission is sustained. The award made therein shall be made good by the builder co. through its chief executive (i.e. its chairman or managing director or director in-charge of its affairs or director in-charge of the subject-matter, whichever member of the board of directors he may be) within six weeks.*

The amount if any deposited by the builder co. with the State Commission in compliance of this Commission's Order dated 13.02.2019 along with interest if any accrued thereon shall be forthwith released by the State Commission to the complainants as per the due procedure. The balance awarded amount shall be made good by the builder co. within six weeks.

(ii) *For the 'unfair trade practice' per se, a cost of Rs. 1 lakh is imposed on the builder co. through its chief executive which shall be deposited in the 'Consumer Legal Aid Account' of the State Commission within six weeks.*

The builder co. through its chief executive is ordered under section 39(1)(g) of the Act 2019 (corresponding section 14(1)(f) of the Act 1986) to forthwith discontinue such 'unfair trade practice' as is manifested in this case.

Additionally the builder co. through its chief executive is directed to send a copy each of this Order to the other 33 allottees mentioned in the public notice dated 12.10.2011 for their information and to file proof thereof with the State Commission within six weeks.

(iii) *In case of failure or omission in compliance of the above directions within the stipulated period, the State Commission shall forthwith undertake execution, for 'enforcement' and for 'penalty', as per the law."*



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2. As a brief background, the facts leading to the present petition are that one Ms. Harmisha had applied for the allotment of a commercial plot in the project of the petitioner company, TDI City, Mohali, in the year 2006 by depositing a sum of Rs.10,00,000/- on 04.04.2006. The respondents herein purchased the said allotment in the year 2008. As the petitioner did not allot the plot to the respondents, the respondents filed a complaint before the learned District Consumer Dispute Redressal Forum, Mohali (hereinafter referred to as 'DCDRF'), on 05.02.2017. The said complaint was, however, returned for lack of pecuniary jurisdiction by the learned DCDRF, vide Order dated 09.11.2017. The respondents then filed a complaint before the learned State Consumer Redressal Commission, Punjab, Chandigarh (hereinafter referred to as 'State Commission'), on 17.04.2018. The said complaint was allowed by the learned State Commission, directing as under:-

"20. In view of our above discussion, the complaint is allowed and the following directions are issued to the opposite parties:-

i) to refund the amount of Rs.16,00,000/- to the complainants along with interest at the rate of 12% per annum from the respective dates of deposits till realization; and

ii) to pay Rs.20,000/-, as compensation for the mental agony and harassment suffered by the complainants including litigation expenses."



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3. Aggrieved of the above order, the petitioner challenged the same before the learned NCDRC in the form of the above referred appeal, which has now been dismissed by the Impugned Order.
4. The learned counsel for the petitioner submits that the learned NCDRC has failed to appreciate that the complaint filed by the respondents was barred by limitation. She submits that the period of limitation for filing of a complaint is prescribed in Section 24A of the Consumer Protection Act, 1986 (in short the 'Act'). She submits that, in the present case, the petitioner had issued a Public Notice dated 12.10.2011, advising various allottees including the respondents herein that their allotment is likely to be cancelled as they have defaulted in payment of the instalments for their respective plots. She submits that, therefore, the cause of action, if any, would arise in favour of the respondents on 12.10.2011; the petition having been filed the Complaint only in the year 2018, the same was, therefore, clearly barred by limitation.
5. She further submits that the learned State Commission and the learned NCDRC have also erred in directing the refund of the amount deposited by the respondents along with interest at the rate of 12% per annum. She submits that the rate of interest awarded by the learned State Commission and the learned NCDRC is exorbitant and is liable to be set aside.
6. The learned counsel for the petitioner further submits that the learned NCDRC has erred in further directing the petitioner to send a copy of the Order passed by the learned NCDRC to the



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other 33 allottees who were also mentioned in the Public Notice dated 12.10.2011, and to file a proof thereof before the learned State Commission. She submits that the other allottees have not taken any legal recourse against the petitioner on the Public Notice. She submits that the petition filed by the respondents was not filed under Section 12(1)(c) of the Act and, therefore, was not a class action. She submits that therefore, the above directions could not have been passed by the learned NCDRC on a complaint made by an individual allottee seeking relief only for the complainant therein.

7. On the other hand, the learned counsel for the respondents submits that the respondents, through the predecessor in interest, had booked a plot of land in the project being developed by the petitioner, way back in the year 2006. The respondents have in total made a payment of Rs.16,00,000/- to the petitioner as on 2008. The petitioner neither returned the said amount nor allotted a plot of land to the respondents, forcing the respondents to file a complaint before the learned DCDRF on 05.02.2017.
8. He submits that the alleged Public Notice dated 12.10.2011 cannot be taken cognizance of, inasmuch as the petitioner did not address any individual letter/correspondence to the respondents cancelling their allotment or even making a demand for further amounts for allotment from them. He submits that the learned State Commission and the learned NCDRC have, therefore, rightly held that the cause of action is a continuing one and the



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complaint filed by the respondents was within the period of limitation.

9. On the aspect of rate of interest, he submits that as the amount has been retained illegally by the petitioner since the year 2006, the learned State Commission has rightly directed refund thereof, along with interest at the rate of 12% per annum.
10. On the direction to the petitioner to supply a copy of the order passed by the learned NCDRC to the other allottees who were mentioned in the alleged Public Notice dated 12.10.2011, he submits that the said direction is also proper inasmuch as the petitioner was falsely relying on this Public Notice to deny legitimate interest of the other allottees as well.
11. I have considered the submissions made by the learned counsels for the parties.
12. At the outset, one would have to appreciate the limited jurisdiction that this Court exercises under Article 227 of the Constitution of India. This Court is not to act as an Appellate Court against the orders passed by the learned NCDRC. The limited jurisdiction of a court under Article 227 of the Constitution of India has been emphasized by the Supreme Court in *Ibrat Faizan v. Omaxe Buildhome Private Limited.*, 2022 SCC OnLine SC 620, wherein reliance was placed *inter-alia* on the judgment in *Garment Craft v. Prakash Chand Goel*, (2022) 4 SCC 181, which in turn has held as under:-

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be



sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.”

13. In the present case, the predecessor in interest of the respondents had booked a plot of land in the project being developed by the petitioner, way back in the year 2006. It is not denied that as of 2008, the respondents, including the amount paid by their predecessor in interest, had paid a total amount of Rs.16,00,000/- to the petitioner for the said plot of land. It is also not disputed by the petitioner that the petitioner has not addressed any correspondence to the respondents demanding any outstanding payment of the instalment from them or cancelling the allotment of plot in their favour. The Public Notice dated 12.10.2011 was a



general one, issued to 33 allottees. It is not shown by the petitioner if any separate notice was issued to the respondents. It is also not the case of the petitioner that the whereabouts of the respondents was not known and it was this reason that instead an individual notice, a Public Notice was issued. It is also not the case of the petitioner that after the issuance of the Public Notice, the allotment of the plot of land in favour of the respondents was, in fact, cancelled by the petitioner.

14. In the above facts, the learned State Commission and the learned NCDRC have, therefore, rightly held that the cause of action for the respondents was a continuing one and the complaint filed was within the period of limitation.
15. As far as the rate of interest is concerned, again in the exercise of the limited jurisdiction that this Court under Article 227 of the Constitution of India, I do not find any reason to interfere with the same. The respondents have clearly been denied the use of their money for all these years, while the petitioner has been enjoying the same for its business purposes. Interest has been awarded by the learned State Commission to compensate the loss suffered by the respondents. The rate of interest is also reasonable and does not warrant any interference from this Court.
16. I, therefore, find no merit in the said challenge.
17. As far as the plea of the petitioner that a direction to supply a copy of the order passed by the learned NCDRC to the other allottees mentioned in the Public Notice could not have been passed by the learned NCDRC, I find merit in the same.



18. Section 12(1)(c) of the Act states that a complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be filed with a District/State/National Consumer Forum by one or more consumers, where there are numerous consumers having the same interest, with the permission of the District/State/National Consumer Forum, on behalf of, or for the benefit of, all consumers so interested. The Forum, therefore, has to grant permission where the complaint purports itself to be a class action, after satisfying itself that it is raising issues of numerous consumers having the same interest.
19. In ***Brigade Enterprises Ltd. v. Anil Kumar Virmani***, (2022) 4 SCC 138, the Supreme Court explained the requirements of the Section 12(1)(c) of the Act, holding that since “sameness of interest” is the prerequisite for an under Order I Rule 8 of the Code of Civil Procedure, 1908 read with Section 35(1)(c) of the Consumer Protection Act, 2019 (which is *pari materia* to Section 12(1)(c) of the Act), it was necessary for the Complaints to include in the complaint sufficient averments that would show sameness of interest. It was further held that “sameness of interest” is not the same as “sameness of the cause of action”. In allowing an application under Section 12(1)(c) of the Act, the pleadings and the reliefs are to be considered. If the same does not show “sameness of interest”, the application under Section 12(1)(c) of the Act must be rejected, though the complaint itself cannot be rejected.



20. In the present case, admittedly, the respondents had not filed a class action, that is, a complaint under Section 12(1)(c) of the Act. There was also no application filed by the respondents to treat the complaint on behalf of other allottees mentioned in the Public Notice. It was a petition filed for only protection of their interest. Though the learned NCDRC found that no reliance can be placed on the Public Notice dated 12.10.2011 issued by the petitioner, in my view, it exceeded its jurisdiction by directing the petitioner to send a copy of the impugned order to the other allottees which were mentioned in the said Public Notice. In case, any of these allottees have taken legal recourse against the petitioner, those have to be adjudicated on their own facts/merits. In any case, the rights of such other allottees would have to be determined in the facts of their own case.
21. In view of the above, this petition partly succeeds. The impugned direction passed by the learned NCDRC directing the petitioner, through its Chief Executive, to send a copy of this order to the other 33 allottees mentioned in the Public Notice dated 12.10.2011 for their information, and to file proof thereof with the learned State Commission, is accordingly set aside. The remaining directions issued by the learned NCDRC in its impugned order are upheld and the petition challenging them is rejected.
22. This Court, while issuing notice on the present petition, had directed the petitioner to deposit the amount awarded by the learned State Commission, along with interest at the rate of 9%



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per annum, with the Registry of this Court. The learned counsel for the petitioner submits that the said direction has been complied with.

23. As the award of compensation in favour of the respondents has been upheld by this Court, the amount so deposited along with interest accrued thereon, shall now be released in favour of the respondents, and is to be adjusted against the total claim amount of the respondents against the petitioner.
24. The petition is disposed of in the above terms.
25. There shall be no order as to costs.

NAVIN CHAWLA, J

DECEMBER 12, 2023/ns/am

Click here to check corrigendum, if any