IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

112 **CWP-26869-2025 (O&M)**
Date of decision: 10.09.2025

Ambika Realcon Pvt. Ltd. ..... Petitioner

VERSUS

National Consumer Disputes Redressal Commission and others

..... Respondents

113 **CWP-26889-2025 (O&M)**

M/s Ambika Realcon Pvt. Ltd. ..... Petitioner

VERSUS

National Consumer Disputes Redressal Commission and others

..... Respondents

114 **CWP-26891-2025 (O&M)**

Ambika Realcon Pvt. Ltd. ..... Petitioner

VERSUS

National Consumer Disputes Redressal Commission and others

..... Respondents

115 **CWP-26895-2025 (O&M)**

Ambika Realcon Pvt. Ltd. ..... Petitioner

VERSUS

National Consumer Disputes Redressal Commission and others

..... Respondents

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CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA

Present: Mr. Munish Gupta, Advocate
for the petitioner (in all petitions)

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DEEPINDER SINGH NALWA, J.

1. All the present writ petitions involve common question of law based on common set of facts and therefore, are being disposed of by one and common judgment.

2. Challenge in the abovesaid writ petitions is to the impugned order dated 20.03.2025 (Annexure P-6) passed by the State Consumer Disputes Redressal Commission, U.T Chandigarh (hereinafter referred to as the 'SCDRC') and order dated 10.06.2025 (Annexure P-8) passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the 'NCDRC'), whereby respondents-complainants were held entitled for compensation by way of interest @ 9% per annum from the date of due date of possession onwards till the date of delivery of the possession on the entire received sale consideration in respect of the units in question along with lumpsum compensation to the tune of Rs.75,000/- on account of mental agony and harassment, deficiency in providing service and also compensation to the tune of Rs.35,000/- on account of litigation cost.

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3. Brief facts of the case are that respondents-complainants, in the abovementioned writ petitions, despite the fact that they are in possession of their respective units and sale deeds have also been executed between the parties, yet, the petitioner-company has failed to pay the compensation for the period of delay in delivery of possession of the said units. The respondents-complainants had filed complaints before the SCDRC claiming compensation on account of delay in delivery of possession of the respective units by the petitioner-company. The details of date of possession, execution of sale deeds, payments made by respondents-complainants, due date of possession and possession delivered, are reproduced in the chart below:-

CC No.	**Complaint No.60/2024** **(CWP-26891-2025)**	**Complaint No.62/2024** **(CWP-26889-2025)**	**Complaint No.63/2024** **(CWP-26869-2025)**	**Complaint No.64/2024** **(CWP-26895-2025)**
Project	Florence Park, New Chandigarh	Florence Park, New Chandigarh	Florence Park, New Chandigarh	Florence Park, New Chandigarh
Unit No.	ORCHID/B/1201	ORCHID/B/301	ORCHID/B/302	ORCHID/B/1204
Area of unit	1400 sq.ft. carpet area and 2080 sq. ft. super area	1400 sq.ft. carpet area and 2080 sq. ft. super area	1640 sq.ft. carpet area and 2480 sq. ft. super area	1400 sq.ft. carpet area and 2080 sq. ft. super area
Total cost as mentioned in agreement	8154266.00 & 7731943.20 (after credit note)	8144928.00 & 7723104.00 (after credit note)	10487284.00 & 9852160.00 (after credit note)	8745984.00 & 8216292.00 (after credit note)
Amount paid	Full and final payment paid	Full and final payment paid as	Full and final payment paid as	Full and final payment paid

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	as admitted in letter dated 29.06.2022, Annexure C-6	admitted in letter dated 16.09.2022, Annexure C-6	admitted in letter dated 22.07.2022, Annexure C-6	as admitted in letter dated 20.08.2022, Annexure C-6
Agreement dated	13.04.2018 (Ann. C-3)	16.05.2018 (Ann. C-3)	29.01.2021 (Ann. C-3)	18.01.2021 (Ann. C-3)
Due date of possession	30.09.2020 (Clause 7.1 of agreement)	30.09.2020 (Clause 7.1 of agreement)	30.09.2021 (Clause 7.1 of agreement)	30.09.2021 (Clause 7.1 of agreement)
Possession delivered on	30.06.2022	21.10.2022	24.07.2022	12.10.2022
Sale deed executed	25.01.2023 (Ann. R-1/6)	Not placed on record	Not placed on record	29.09.2022 (Ann. R-1/7)
Delay in delivery of possession	21 months as mentioned in the complaint.	18 months as mentioned in the complaint.	10 months as mentioned in the complaint.	13 months as mentioned in the complaint.

4. The petitioner-company duly filed separate written statements in the complaints filed by respondents-complainants. The objections taken by the petitioner-company in the complaints filed by respondents-complainants are reproduced below:-

"*(i) that the complainants have concealed material facts from this Commission;*

(ii) that the complainants being investors did not fall within the definition of consumers;

(iii) that permission to file joint respective complaints has not been filed by the complainants and as such, the same are liable to be dismissed on this ground alone;

(iv) that this Commission is not vested with territorial and pecuniary jurisdiction to decide these complaints;

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(v) that in the face of arbitration clause contained in the agreements to settle all the dispute arising out of the unit in question through arbitration, this Commission is having no jurisdiction to entertain these complaints;

(vi) that although as per Clause 7.1 of the agreement, possession of the unit in question was to be delivered, as per dates given in the chart above, yet, it was delayed because the opposite party suffered force majeure circumstances due to COVID-19;

(vii) that the Competent Authority vide circular dated 28.10.2020, Annexure R-1/1, granted extension of period of 6 months for ongoing project, where the completion date was due on or before 15.03.2020 and, as such, the said period of 6 months was to be added in the period of delivery of possession of the units in question to the complainants;

(viii) that occupation and partial completion certificates in respect of the unit/tower in question have been received by opposite party from competent authorities and thereafter possession of the respective units were handed over to the complainants and even sale deeds also stood executed;

(ix) that delay if any was on the part of the competent authorities in issuing occupation and partial completion certificates, therefore, for that the company cannot be held responsible;

(x) that at the time of obtaining NOC from the opposite party, the complainants have recorded their satisfaction regarding amenities, additional area etc.;

(xi) that once possession of the respective units have been taken over without any protest and also the sale deeds have also been executed, now the complainants are stopped from claiming any compensation, as the same stands waived off by them;

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(xii) that the principle of estoppels and waiver are completely applicable to the present cases after execution of sale deeds and the complainants cease to be consumer;

(xiii) that whatever amount was charged from the complainants was strictly as per terms and conditions of the respective agreements;

(xiv) that the complainants were defaulters in making payment, which resulted into delay in delivery of possession of the respective units;

(xv) that since the complainants have made payment in installments and major chunk of amount has been paid at the time of delivery of possession, therefore, they cannot seek interest on the entire amount paid from the date of payment;

(xvi) that the complaint is bad for misjoinder and nonjoinder of necessary parties, as the financial institutions from which loan has been obtained has not been made party."

5. On consideration and the evidence led by the respective parties, the SCDRC vide order dated 20.03.2025 allowed the complaints filed by respondents-complainants. As per the order of the SCDRC, respondents-complainants were held entitled for interest @ 9% per annum from the due date of possession onwards till the date of delivery of the possession on the entire received sale consideration in respect of the units in question within a period of 30 days from the date of receipt of a certified copy of the order. The respondents-complainants were also held entitled for compensation to the tune of Rs.75,000/- on account of mental agony, harassment and deficiency in service along with cost of litigation

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to the tune of Rs.35,000/-. Relevant extract of the order dated 20.03.2025 passed by the SCDRC is reproduced below:-

> *"In* ***<u>Consumer complaint bearing no.60 of 2024, the opposite party is directed to :-</u>***
>
> *(i) To pay to the complainants, compensation by way of interest @ 9% p.a. from 29.06.2021 (due date of possession as discussed above) onwards till 30.06.2022 (date of delivery of possession) on the entire received sale consideration in respect of the unit in question, within a period of 30 days from the date of receipt of a certified copy of this order, failing which the entire accumulated amount of compensation from 29.06.2021 to 30.06.2022 aforesaid shall carry interest @ 12 % p.a. from the date of default till this entire accumulated amount is paid to the complainants.*
>
> *(ii) To pay lumpsum compensation to the tune of Rs.75,000/- for causing them (complainants) mental agony & harassment, deficiency in providing service and also cost of litigation to the tune of Rs.35,000/-, within a period of 30 days, from the date of receipt of a certified copy of this order, failing which the said amounts shall carry interest @ 9% p.a. from the date of default till realization.*
>
> *In* ***<u>Consumer complaint bearing no.62 of 2024, the opposite party is directed to :-</u>***
>
> *(i) To pay to the complainants, compensation by way of interest @ 9% p.a. from 29.06.2021 (due date of possession as discussed above) onwards till 21.10.2022 (date of delivery of possession) on the entire received sale consideration in respect of the unit in question, within a period of 30 days from the date of receipt of a certified copy of this order, failing which the entire accumulated amount of compensation from 29.06.2021 to*

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21.10.2022 aforesaid shall carry interest @ 12 % p.a. from the date of default till this entire accumulated amount is paid to the complainants.

(ii) To pay lumpsum compensation to the tune of Rs.75,000/- for causing them (complainants) mental agony & harassment, deficiency in providing service and also cost of litigation to the tune of Rs.35,000/-, within a period of 30 days, from the date of receipt of a certified copy of this order, failing which the said amounts shall carry interest @ 9% p.a. from the date of default till realization.

In ***<u>Consumer complaint bearing no.63 of 2024, the opposite party is directed to :-</u>***

(i) To pay to the complainants, compensation by way of interest @ 9% p.a. from 30.09.2021 (due date of possession as discussed above) onwards till 24.07.2022 (date of delivery of possession) on the entire received sale consideration in respect of the unit in question, within a period of 30 days from the date of receipt of a certified copy of this order, failing which the entire accumulated amount of compensation from 30.09.2021 to 24.07.2022 aforesaid shall carry interest @ 12 % p.a. from the date of default till this entire accumulated amount is paid to the complainants.

(ii) To pay lumpsum compensation to the tune of Rs.75,000/- for causing them (complainants) mental agony & harassment, deficiency in providing service and also cost of litigation to the tune of Rs.35,000/-, within a period of 30 days, from the date of receipt of a certified copy of this order, failing which the said amounts shall carry interest @ 9% p.a. from the date of default till realization.

In ***<u>Consumer complaint bearing no.64 of 2024, the opposite party is directed to :-</u>***

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(i) To pay to the complainants, compensation by way of interest @ 9% p.a. from 30.09.2021 (due date of possession as discussed above) onwards till 12.10.2022 (date of delivery of possession) on the entire received sale consideration in respect of the unit in question, within a period of 30 days from the date of receipt of a certified copy of this order, failing which the entire accumulated amount of compensation from 30.09.2021to 12.10.2022 aforesaid shall carry interest @ 12 % p.a. from the date of default till this entire accumulated amount is paid to the complainants.

(ii) To pay lumpsum compensation to the tune of Rs.75,000/- for causing them (complainants) mental agony & harassment, deficiency in providing service and also cost of litigation to the tune of Rs.35,000/-, within a period of 30 days, from the date of receipt of a certified copy of this order, failing which the said amounts shall carry interest @ 9% p.a. from the date of default till realization.

6. A perusal of the order passed by the SCDRC would show it has been held by SCDRC that in the absence of any express discharge voucher or consent received from respondents-complainants by the petitioner-company before execution of the sale deed qua waiver or delayed compensation, the objection raised by the petitioner-company that respondents-complainants have waived off the compensation at the time of execution of the sale deed cannot be accepted. It was also held that even the contents of the sale deed does not clarify, as to whether, the delay waived of is regarding execution of sale deed or relating to delay in delivery of possession of the said unit or of the delayed compensation.

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Relevant extract of order dated 20.03.2025 passed by the SCDRC is reproduced below:-

"Compensation for the period of delay in delivery of possession of the respective units:-

14. It may be stated here that since admittedly the complainants are in possession of their respective units and sale deeds have also been executed between the parties, therefore, the only question which needs to be decided by this Commission is, as to whether, the complainants are entitled to get any compensation for delay in delivery of possession or not? It may be stated here that though the opposite party has raised objection to the effect that since the complainants themselves have waived off any compensation at the time of execution of sale deeds and they have specifically agreed vide clause 1 (h) that vacant and physical possession of the said Unit has been handed over by the Vendor to the Vendee(s) herein at the time of execution of this Deed of Conveyance/Sale Deed and the Vendee(s) acknowledges having taken over the possession of the same to the Vendee(s)'s complete satisfaction with respect to amongst others, the quality, design, specifications & materials of the earthquake resistant structure constituting the building of which the said Unit is integrated/ integral part and the Vendee(s) agree/s that the Vendee(s) shall have no claim whatsoever against the Vendor with regard to any defects or deficiency in construction, quality of materials used or on account of any delays, yet, in our considered opinion this objection is not sustainable, in the absence of any express discharge voucher or consent received from the complainants by the opposite party before execution of the sale deeds qua waiver of delayed compensation. Even otherwise, a bare perusal of contents of clause I (h) of the said deed (ibid) also did not clarify, as to whether, the delay waived off, is regarding execution of sale

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deed or relating to delay in delivery of possession of the said unit or of delayed compensation. A similar question has already been dealt with by this Commission in Madan Lal Kansal Vs. Dlf Homes Panchkula Pvt. Ltd., CC No.805 of 2017 decided on 14 March, 2019 wherein also despite the fact that sale deed has been executed, compensation for the period of delay in delivery of possession was awarded by this Commission. The builder challenged the said order dated 14.03.2019, by way of filing Appeal No.783 of 2019 before the Hon'ble National Commission. However, the order dated 14.03.2019 stood upheld by the Hon'ble National Commission vide order dated 22.07.2022, with modification and only the rate of interest on delayed compensation was decreased from 12% p.a. to 9% p.a.

Furthermore, in the present case, there is nothing on record that any express discharge voucher qua non payment of compensation for the period of delay in delivery of possession as envisaged in Clause 7.6 of the agreement was furnished by the complainants to the opposite party. Under similar circumstances, in 'P. Dasa Muni Reddy Vs. P. Appa Rao, 1974 AIR (SC) 2089, the Hon'ble Supreme Court of India in Para 13 has held as under:-

"....13. Abandonment of right is much more than mere waiver, acquies-cence or laches. The decision of the High Court in the present case is that the appellant has waived the right to evict the respondent. Waiver is an intentional relinquishment of a known right or advantage, benefit, claim or privilege which except for such waiver the party would have enjoyed. Waiver can also be a voluntary surrender of a right. The Doctrine of waiver has been applied in cases where landlords claimed forfeiture of lease or tenancy because of breach of some condition in the contract of tenancy. The doctrine which the courts of law will recognise is a rule of judicial policy that a person will not be

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allowed to take inconsistent positions to gain advantage through the aid of courts. Waiver sometimes partakes of the nature of an election. Waiver is consensual in nature. It implies a meeting of the minds. It is a matter of mutual intention. The doctrine does not depend on misrepresentation. Waiver actually requires two parties, one party waiving and another receiving the benefit of waiver. There can be waiver so intended by one party and so understood by the other. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a right. The voluntary choice is the essence of waiver. There should exist an opportunity for choice between the relinquishment and an enforcement of the right in question. It cannot be held that there has been a waiver of valuable rights where the circumstances show that what was done was involuntary. There can be no waiver of a non-existent right. Similarly, one cannot waive that which is not one's as a right at the time of waiver. Some mistake or misapprehension as to some facts which constitute the underlying assumption without which parties would not have made the contract may be sufficient to justify the court in saying that there was no consent......"

In this view of the matter, objection taken by the opposite party in this regard rejected."

7. Further, the objection raised by the petitioner-company as to the delay in delivery of possession was on account of *force majeure* circumstances due to Covid-19, it has been held by the SCDRC that the petitioner-company had failed to offer and deliver possession of the units, not only within the promised time frame, but even beyond the extended period of nine months that was granted due to Covid-19 pandemic. Thus, the petitioner-company had demonstrated a clear deficiency in its service.

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8. Aggrieved against the order dated 20.03.2025 passed by the SCDRC, the petitioner-company filed first appeals before the NCDRC, New Delhi. The appeals came up for consideration before the NCDRC on 10.06.2025 and were accordingly dismissed, by upholding the order passed by the SCDRC.

9. A perusal of the order dated 10.06.2025 passed by the NCDRC would reveal that as per the NCDRC, the letter dated 24.06.2022 will not act as waiver on the part of respondents-complainants and will not attract the *principle of estoppel* as contended. It was also held that the abovesaid letter, by no means, can be construed as a waiver or agreement between the parties for waiving the entitlement of delayed compensation. Even if, the sale deeds have been executed between the parties, it does not debar respondents-complainants from the legitimate entitlement of delayed compensation. Relevant extract of the order dated 10.06.2025 passed by the NCDRC is reproduced below:-

> *"In the present cases, possession of the respective units have already been given and Sale Deeds have also been executed between the parties. The main issue is with respect to the delay compensation. Vide impugned order, the State Commission has directed the payment of delay compensation from the due date of possession till the date of possession in all the cases. Counsel for the Appellants submits that as per the Agreement, the committed date of possession on 30.09.2020 but due to Covid, certain extensions were granted and hence, he does not dispute the due date of possession as recorded in the impugned order passed by the State Commission. He further admits that the possession in*

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question was handed over on 30.06.2022 and the fact that the partial Occupancy Certificate was handed over on 29.06.2022 and final Occupancy Certificate on 29.07.2022. It is also admitted that prior to the date of possession i.e. 29.07.2022, there was no other offer of possession. The only ground on which payment of delay compensation has been objected to by the Appellants herein is that (a) the Complainants have entered into a settlement vide which, they have waived off all their rights and hence, no delay compensation is payable. Extract of one such letter dated 24.06.2024 in FA/290/2025 is reproduced below:

Date-24-06-2022

To,
The Commercial Department,
Ambika Realcon Private Limited,
Chandigarh.
<u>Subiect:- Request to issue No Dues Certificate for unit no. FP/ORCHID/B/1201</u>

Dear Sir,

With Reference to my apartment bearing No. FP/ORCHID/B/1201, I hereby request you to kindly issue a "No dues certificate" of my apartment, as all accounts (payables and receivables) with the company, as per the terms and conditions of the agreement dated 13-Apr-2018 stands settled and now nothing is due against each other and its includes future claims also except maintenance charges, as explained hereinafter. I am fully aware and satisfied with the various facilities which the company is providing at present. Besides it, I am fully satisfied with the construction and finishing quality in my flat. I understand that proper maintenance of any society is very important for safe, comfortable and happy living and I undertake that I will pay my

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maintenance charges fixed/demanded by the company or its nominee, in timely manner.

Yours Faithfully.

(Vivek Bhardwaj & Promila Raita)"

5. Similar letters are there in other cases. In their written version before the State Commission, they have objected the Complaint inter-alia on following grounds:

"(xi) that once possession of the respective units have been taken over without any protest and also the sale deeds have also been executed, now the complainants are stopped from claiming any compensation, as the same stands waived off by them;

(xii) that the principle of estoppels and waiver are completely applicable to the present cases after execution of sale deeds and the complainants cease to be consumer,

6. The State Commission has considered at length various objections of the Opposite Party (Appellant herein) with respect to the territorial jurisdiction, pecuniary jurisdiction, the Complainants not being consumers, force majeure circumstances etc. and have passed appropriate orders. These aspects have not been contested by the Appellants herein before us in the Appeals and the only issue raised is entitlement of delay compensation to the Respondents with respect to the delay compensation. The issue of entitlement of delay compensation has already been dealt with in detail by the State Commission in its order and the relevant paras are reproduced below:

"Compensation for the period of delay in delivery of possession of the respective units:-

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14. It may be stated here that since admittedly the complainants are in possession of their respective units and sale deeds have also been executed between the parties, therefore, the only question which needs to be decided by this Commission is, as to whether, the complainants are entitled to get any compensation for delay in delivery of possession or not? It may be stated here that though the opposite party has raised objection to the effect that since the complainants themselves have waived off any compensation at the time of execution of sale deeds and they have specifically agreed vide clause 1 (h) that vacant and physical possession of the said Unit has been handed over by the Vendor to the Vendee(s) herein at the time of execution of this Deed of Conveyance/Sale Deed and the Vendee(s) acknowledges having taken over the possession of the same to the Vendee(s)'s complete satisfaction with respect to amongst others, the quality, design, specifications & materials of the earthquake resistant structure constituting the building of which the said Unit is integrated/integral part and the Vendee(s) agree/s that the Vendee(s) shall have no claim whatsoever against the Vendor with regard to any defects or deficiency in construction, quality of materials used or on account of any delays, yet, in our considered opinion this objection is not sustainable, in the absence of any express discharge voucher or consent received from the complainants by the opposite party before execution of the sale deeds qua waiver of delayed compensation. Even otherwise, a bare perusal of contents of clause 1(h) of the said deed (ibid) also did not clarify as to whether the delay waived off is regarding execution of sale deed or relating to delay in delivery of possession of the said unit or of delayed compensation. A similar question has ready beet dealt with by this Commission in Madan Lal Kansal vs DLF Homes Panchkula Pvt. Ltd., CC No. 805 of 2017 decided on 14 March, 2019 wherein also despite the fact that sale deed has been executed, compensation for the period of

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delay in delivery of possession was awarded by this Commission. The builder challenged the said order dated 14.03.2019, by way of filing Appeal No. 783 of 2019 before the Hon'ble National Commission. However, the order dated 14.03.2019 stood upheld by the Hon'ble National Commission vide order dated 22.07.2022, with modification and only the rate of interest on delayed compensation was decreased from 12% p.a. to 9% p.a.

Furthermore, in the present case, there is nothing on record that any express discharge voucher qua non payment of compensation for the period of delay in delivery of possession as envisaged in Clause 7.6 of the agreement was furnished by the complainants to the opposite party. Under similar circumstances, in 'P. Dasa Muni Reddy Vs. P. Appa Rao, 1974 AIR (SC) 2089, the Hon'ble Supreme Court of India in Para 13 has held as under-

"....13. Abandonment of right is much more, than mere waiver, acquiescence or laches. The decision of the High Court in the present case is that the appellant has waived the right to evict the respondent. Waiver is an intentional relinquishment of a known right or advantage, benefit, claim or privilege which except for such waiver the party would have enjoyed. Waiver can also be a voluntary surrender of a right. The Doctrine of waiver has been applied in cases where landlords claimed forfeiture of lease or tenancy because of breach of some condition in the contract of tenancy. The doctrine which the courts of law will recognise is a rule of judicial policy that a person will not be allowed to take inconsistent positions to gain advantage through the aid of courts. Waiver sometimes partakes of the nature of an election. Waiver is consensual in nature. It implies a meeting of the minds. It is a matter of mutual intention. The doctrine does not depend on misrepresentation. Waiver actually requires two parties, one party waiving and another receiving the benefit of waiver. There can be waiver so intended by one party and so

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understood by the other. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a right. The voluntary choice is the essence of waiver. There should exist an opportunity for choice between the relinquishment and an enforcement of the right in question. It cannot be held that there has been a waiver of valuable rights where the circumstances show that what was done was involuntary. There can be no waiver of a non-existent right. Similarly, one cannot waive that which is not one's as a right at the time of waiver. Some mistake or misapprehension as to some facts which constitute the underlying assumption without which parties would not have made the contract may be sufficient to justify the court in saying that there was no consent......

In this view of the matter, objection taken by the opposite party in this regard Chan stands rejected.

15. Now the question arises, as to what compensation should be granted to the complainants for delay in delivery of possession of the unit in question? It may be stated here that Consumer Protection Act has been made to safeguard the consumer rights in the present case failure of opposite party to offer and deliver possession of the unit in question, in a timely manner as discussed above amounts to deficiency in service. In the case titled as <u>Lucknow Development Authority M.K. Gupta [1994] 1 SCC 243</u>, the Hon'ble Supreme Court discussed about the extent of the jurisdiction of the Consumer Fora to award just and reasonable compensation for the harassment and agony suffered by a consumer. In <u>DLF Homes Panchkula Pvt. Ltd. Versus Himanshu Arora, Civil Appeal No. 11097 of 2018,</u> decided on 19 November, 2018 under similar circumstances, the Hon'ble Supreme Court of India has upheld the order of the Hon'ble National Commission awarding Interest @ 9% p.a. for the period of delay in delivery of actual physical possession. Thereafter also,

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similar rate of interest i.e. 9% p.a. was granted by the Hon'ble Supreme Court in DLF Homes Panchkula (P) Ltd. Versus Sushila Devi, Civil Appeal Nos. 2285-2330 of 2019, decided on 26 February, 2019 by making reference to the earlier order passed by it in Himanshu Arora's case (supra). Furthermore, in Nagesh Maruti Utekar Vs. Sunstone Developers Joint Venture, Consumer Case No. 12 of 2017 decided on 04 May 2022 also, the Hon'ble National Commission awarded interest @9% p.a. from the committed date of delivery till actual physical possession is delivered. In Shreya Kumar & 11 Ors Vs. M/s Ansal Housing & Construction Ltd. & 3 Ors., Consumer Case No. 1021 of 2017, decided on 05 May 2022, the Larger Bench of the Hon'ble National Commission has awarded interest @ 9% p.a. from the committed date of delivery till actual physical possession is delivered.

Under these circumstances, if we grant interest @9% p.a. to the complainants on the entire amount deposited by them towards their on respective units from due dates onwards, as discussed above, till possession of the unit in question has actually been delivered to them, after deducting the period of 9 months due to COVID-19, that will meet the ends of justice.

Complainants are consumers even after execution of sale deeds:-

16. As far as objection taken by the opposite party to the effect that the complainants ceased to be consumers, after execution of sale deeds, it may be stated here that this objection does not merit acceptance, in view of law laid down by the Hon'ble Supreme Court in the case of Debashis Sinha vs M/s R.N.R Enterprise, Civil Appeal No.3343 of 2020 February 9 2023, wherein it was held that the mere fact that possession has been taken over by the consumer and sale deed has been registered,

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cannot forfeit his/her right to claim the services promised by the project proponent."

7. After careful consideration of all the facts and circumstances of the case and considering that the possession was given to the Complainant with valid Occupancy Certificate after a delay beyond the committed date, hence, the Complainants/Respondents herein are entitled to delay compensation. The so called Agreement/Letter dated 24.06.2022 cited will not act as a waiver on the part of the Complainants and will not attract the principal of estoppel as contended. The above stated letter by no means can be construed as any waiver or agreement between the parties for waiving the entitlement of delay compensation. Even the contention of the Appellant that Sale Deeds have since been executed, will not come to their help as subsequent execution of Sale Deeds also does not debar the Complainants from their legitimate entitlement of delay compensation. Counsel for the Appellant placed reliance on the following judgments: ***CC No.203 of 2018 Sh. Om Prakash Gupta & Anr. Vs. M/s Ansal Properties & Industries dated 04.05.2021 and V. Anantha Raju & Anr. Vs. T.M. Narasimhan & Ors. (2021) 17 SCC 165.***

8. After a careful consideration of the orders of the State Commission, we are of the considered view that the State Commission has passed a well-reasoned order and we find no reason to interfere with the same. There is no illegality, material irregularity or jurisdictional error in the orders of the State Commission. Hence, the said order is upheld and accordingly, all the four First Appeals covered under this order are dismissed."

10. Aggrieved against the order dated 20.03.2025 (Annexure P-6) passed by the SCDRC and the order dated 10.06.2025 (Annexure P-8)

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passed by the NCDRC, the petitioner-company has filed the present writ petitions.

11. The only argument addressed before us by the learned counsel appearing on behalf of the petitioner-company is that once, respondents-complainants had made a request for issuance of No Dues Certificate for unit and had mentioned that all the accounts with the petitioner-company, as per terms and conditions of agreement, stand settled and there was nothing due from the petitioner-company, as such, respondents-complainants are not entitled to claim any compensation on account for delay in giving the possession of the unit to respondents-complainants by the petitioner-company.

12. We have heard the learned counsel appearing on behalf of the petitioner-company and gone through the documents available on the record.

13. A perusal of the facts of the present cases would show that it is an admitted fact that there was a delay in giving the possession of unit to respondents-complainants by the petitioner-company. The petitioner-company applied for Occupation and Partial Completion Certificates in the year 2022 only i.e. after a significant delay of about two years from the committed due date of possession. It is well settled law that it is builder's responsibility to compensate delay in giving possession of the unit. Request for No Dues Certificate or issuance of No Dues Certificate

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does not absolve the builder from his responsibility to give possession of the unit to the buyers in time. It is also well settled law that there cannot be any estoppel against the law. Buyers are entitled for compensation on account of delay in delivery of the possession of the unit/units.

14. Reliance has been placed upon case titled as **Santhosh Narasimha Murthy and Ors. Vs. M/s Mantri Castles Private Limited and Anr, 2025(2) SCC 243,** decided on 25.07.2023, wherein it has been held by the Hon'ble Apex Court that home buyers are entitled to compensation for delayed possession. The relevant contents are reproduced as follows:-

> *"10. Clause 6.1 of the agreement stipulates that the developer shall construct for the purchaser, the apartment which was contracted for and* ***possession*** *would be handed over in terms of Annexure B-1. Clause 6.4 contains a force majeure clause. Annexure B-1 contains the assured date of* ***possession.***
>
> *11. For the purpose of these proceedings, counsel appearing on behalf of the home buyers and the first respondent-developer have proceeded on the basis of the dates of* ***possession*** *as indicated in Annexure P-14 to the Civil Appeal. Having due regard to Clause 14.5 of the agreements, each of the sixty-two home buyers is entitled to* ***compensation*** *at the rate of Rs. 3 per square foot per month for the delay of nearly six to seven years in granting* ***possession****. The* ***compensation*** *shall be payable for each home buyer from the date on which* ***possession*** *was assured (as reflected in Annexure P-14) until 19 February 2023 when* ***possession*** *was handed over by the developer.*
>
> *12. The NCDRC has awarded interest at the rate of 6% per annum on the deposits made by the complainants with effect*

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from 28 February 2018 till the offer of possession. This has been questioned on behalf of the home buyers on the ground that they are entitled to interest with effect from the respective dates on which the deposit of consideration was made with the developer. Moreover, it has been submitted that interest at the rate of 6% per annum must be enhanced to 9% per annum.

13. On the other hand, counsel for the developer submits that the developer had, in addition, paid EMIs on behalf of the home buyers.

14. The home buyers have submitted that the EMIs were paid in terms of the scheme which was agreed upon and were paid only for some of the home buyers.

15. The home buyers are entitled to interest with effect from the assured dates of ***possession*** *until the offer of* ***possession*** *was made on 19 February 2023.*

16. In the facts of the present case, we affirm the award of interest at the rate of 6% per annum by the NCDRC subject to the modification that interest shall be payable with effect from the respective dates prescribed in the agreements for delivery of ***possession.***

17. We accordingly allow the appeal filed by the home buyers in the following terms :

(i) The home buyers shall be paid ***compensation*** *on account of* ***delayed possession*** *at the rate of Rs 3 per square foot per month in terms of clause 14.5 of the buyer agreements.*

(ii) For computing the amount due under clause 14.5 in terms of (i) above, the assured dates of ***possession,*** *as reflected in Annexure P-14, shall be the dates with effect from which the payment would be computed. The* ***compensation*** *shall be payable until 31 January 2023.*

(iii) The home buyers shall be entitled to interest at the rate of 6% per annum with effect from the respective dates fixed for handing over ***possession,*** *as reflected in Annexure P-14; and*

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(iv) The amounts which are due and payable in the above terms shall be paid over on or before 30 September 2023.

18. The appeal is accordingly allowed."

15. Further, in case of **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd. and Ors. 2020 (16) SCC 512,** decided on 24.08.2020, the Hon'ble Supreme Court has held that flat purchasers who have obtained possession or executed deeds of conveyance do not lose their right to make a claim for compensation for delay in handing over of the flats. Relevant contents are reproduced as follows:-

"24. A failure of the developer to comply with the contractual obligation to provide the flat to a flat purchaser within a contractually stipulated period amounts to a deficiency. There is a fault, shortcoming or inadequacy in the nature and manner of performance which has been undertaken to be performed in pursuance of the contract in relation to the service. The expression 'service in Section 2 (1) (o) means a service of any description which is made available to potential users including the provision of facilities in connection with (among other things) housing construction. Under Section 14(1)(e), the jurisdiction of the consumer forum extends to directing the opposite party inter alia to remove the deficiency in the service in question. Intrinsic to the jurisdiction which has been conferred to direct the removal of a deficiency in service is the provision of compensation as a measure of restitution to a flat buyer for the delay which has been occasioned by the developer beyond the period within which possession

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was to be handed over to the purchaser. Flat purchasers suffer agony and harassment, as a result of the default of the developer. Flat purchasers make legitimate assessments in regard to the future course of their lives based on the flat which has been purchased being available for use and occupation. These legitimate expectations are belied when the developer as in the present case is guilty of a delay of years in the fulfilment of a contractual obligation. To uphold the contention of the developer that the flat buyer is constrained by the terms of the agreed rate irrespective of the nature or extent of delay would result in a miscarriage of justice. Undoubtedly, as this court held in Dhanda, courts ordinarily would hold parties down to a contractual bargain. Equally the court cannot be oblivious to the one-sided nature of ABAs which are drafted by and to protect the interest of the developer. Parliament consciously designed remedies in the CP Act 1986 to protect consumers. Where, as in the present case, there has been a gross delay in the handing over of possession beyond the contractually stipulated debt, we are clearly of the view that the jurisdiction of the consumer forum to award just and reasonable compensation as an incident of its power to direct the removal of a deficiency in service is not constrained by the terms of a rate which is prescribed in an unfair bargain.

xxxx xxxx xxxx xxxx

35. The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a

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construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation.

*36. It has been urged by the learned counsel of the developer that a consequence of the execution of the Deed of Conveyance in the present case is that the same ceases to be a transaction in the nature of "supply of services" covered under the CP Act 1986 and becomes a mere sale of immovable property which is not amenable to the jurisdiction of Consumer Fora. In **Narne Construction (P) Ltd. v. Union of India (2012) 5 SCC 359**, this Court distinguished between a simple transfer of a piece of immovable property and housing construction or building activity carried out by a private or statutory body falling in the category of 'service' within the meaning of Section 2 (1) (o) of the CP Act 1986. This Court held that:*

*"8. Having regard to the nature of transaction between the appellant Company and its customers involved much more than a simple transfer of a piece of immovable property it is clear the same constitutes "service" within the meaning of the Act. It was not the case that the appellant Company was selling the given property with all its advantages and/or disadvantages on "as is where is" basis, as was the position in **UT Chandigarh Admn v. Amarjeet Singh**. It is a case where a clear-cut assurance was made to the purchasers as to the nature and extent of development that would be carried out by the appellant Company as a part of package under which a sale of fully developed plots with assured facilities was made in favour of the purchasers for valuable consideration. To the extent the transfer of site with developments in the manner and to*

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the extent indicated earlier was a part of the transaction, the appellant Company has indeed undertaken to provide a service. Any deficiency or defect in such service would make it accountable before the competent Consumer Forum at the instance of consumers like the respondents.”

The developer in the present case has undertaken to provide a service in the nature of developing residential flats with certain amenities and remains amenable to the jurisdiction of the Consumer Fora. Consequently, we are unable to subscribe to the view of the NCDRC that flat purchasers who obtained possession or executed Deeds of Conveyance have lost their right to make a claim for compensation for the delayed handing over of the flats.

xxxx xxxx xxxx xxxx

55. For the above reasons we have come to the conclusion that the dismissal of the complaint by the NCDRC was erroneous. The flat buyers are entitled to compensation for delayed handing over of possession and for the failure of the developer to fulfil the representations made to flat buyers in regard to the provision of amenities. The reasoning of the NCDRC on these facets suffers from a clear perversity and patent errors of law which have been noticed in the earlier part of this judgment. Allowing the appeals in part, we set aside the impugned judgment and order of the NCDRC dated 2 July 2019 dismissing the consumer complaint. While doing so, we issue the following directions:

(i) Save and except for eleven appellants who entered into specific settlements with the developer and three appellants who have sold their right, title and interest under the ABA, the first and second respondents shall, as a measure of compensation, pay an amount calculated at the rate of 6 per cent simple interest per annum to each of the

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> *appellants. The amount shall be computed on the total amounts paid towards the purchase of the respective flats with effect from the date of expiry of thirty-six months from the execution of the respective ABAs until the date of the offer of possession after the receipt of the occupation certificate;*
>
> *(ii) The above amount shall be in addition to the amounts which have been paid over or credited by the developer at the rate of Rs 5 per square foot per month at the time of the drawing of final accounts; and*
>
> *(iii) The amounts due and payable in terms of directions (i) and (ii) above shall be paid over within a period of one month from the date of this judgment failing which they shall carry interest at the rate of 9 per cent per annum until payment.*
>
> *56. The civil appeals are accordingly allowed in the above terms.*
>
> *57. Pending application(s), if any, shall stand disposed of."*

16. A perusal of the request made by respondents-complainants for grant of No Dues Certificate would show that it nowhere mentions that respondents-complainants have waived off their right to claim compensation on account of delay in giving possession of the unit/units.

17. A High Court while exercising its power of judicial review against the order passed by the NCDRC, exercises a limited revisional jurisdiction and interferes only in the cases where, there is an error apparent in law or there is an illegality, impropriety or perversity in the impugned order.

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18. Since no defect in the order passed by the NCDRC has been pointed out during the course of arguments and there is no evidence to hold that the orders suffer from any illegality, impropriety or perversity or incorrect appreciation of the evidence brought on record, we find that there are no sufficient grounds existing in the present writ petitions to call for any interference in the order dated 20.03.2025 (Annexure P-6) passed by the SCDRC and the order dated 10.06.2025 (Annexure P-8) passed by NCDRC. Accordingly, the present writ petitions are **dismissed** *in limine.*

19. Pending miscellaneous application(s), if any, also stand(s) disposed of.

20. A photocopy of this order be placed on the files of the other connected cases.

(GURVINDER SINGH GILL)
JUDGE

(DEEPINDER SINGH NALWA)
JUDGE

10.09.2025
Ramandeep Singh

Whether speaking / reasoned Yes /No

Whether Reportable Yes/No

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