



2025:DHC:4353



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21<sup>st</sup> MAY, 2025

IN THE MATTER OF:

+ **W.P.(C) 6120/2023 & CM APPL. 24033/2023, CM APPL. 40360/2023 & CM APPL. 40361/2023**

MANAGING DIRECTOR, ARMY WELFARE HOUSING  
ORGANISATION AND ORS. ....Petitioners

Through: Mr. Anand Shankar Jha, Ms. Meenakshi Devgan, Mr. Abhilekh Tiwari, Mr. Sachin Mintri, Mr. Parvez Rahman, Mr. Shubhank Sharma, Hare Ram Tiwari, Advs.

versus

COL ASHOK KUMAR SOOD (RETD) .....Respondent

Through: Mr. Rohit Kaushik, Ms. Astha Sharma, Mr. Sanjeev Kaushik, Mr. Simranjeet Singh Rekhi, and Ms. Shriya Mishra, Advocates.

+ **W.P.(C) 6306/2023 & CAV 247/2023, CM APPL. 24743/2023, CM APPL. 40358/2023 & CM APPL. 40359/2023**

MANAGING DIRECTOR ARMY WELFARE HOUSING  
ORGANIZATION & ORS. ....Petitioners

Through: Mr. Anand Shankar Jha, Ms. Meenakshi Devgan, Mr. Abhilekh Tiwari, Mr. Sachin Mintri, Mr. Parvez Rahman, Mr. Shubhank Sharma, Hare Ram Tiwari, Advs.

versus

COL SAT PAL SHARMA (RETD) .....Respondent

Through: Mr. Rohit Kaushik, Ms. Astha



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Sharma, Mr. Sanjeev Kaushik, Mr. Simranjeet Singh Rekhi, and Ms. Shriya Mishra, Advocates.

+ **W.P.(C) 6325/2023 & CM APPL. 24853/2023, CM APPL. 40364/2023 & CM APPL. 40365/2023**

MANAGING DIRECTOR ARMY WELFARE HOUSING ORGANIZATION & ORS. ....Petitioners

Through: Mr. Anand Shankar Jha, Ms. Meenakshi Devgan, Mr. Abhilekh Tiwari, Mr. Sachin Mintri, Mr. Parvez Rahman, Mr. Shubhank Sharma, Hare Ram Tiwari, Advs.

versus

COL RABINDER NATH (RETD) .....Respondent

Through: Mr. Rohit Kaushik, Ms. Astha Sharma, Mr. Sanjeev Kaushik, Mr. Simranjeet Singh Rekhi, and Ms. Shriya Mishra, Advocates.  
Mr. Piyush Beriwal, Mr. Sandip Munian and Ms. Jyotsna Vyas, Advs for R-2.

+ **W.P.(C) 6327/2023 & CAV 250/2023, CM APPL. 24859/2023, CM APPL. 40356/2023 & CM APPL. 40357/2023**

MANAGING DIRECTOR ARMY WELFARE HOUSING ORGANIZATION (AWHO) & ANR. ....Petitioners

Through: Mr. Anand Shankar Jha, Ms. Meenakshi Devgan, Mr. Abhilekh Tiwari, Mr. Sachin Mintri, Mr. Parvez Rahman, Mr. Shubhank Sharma, Hare Ram Tiwari, Advs.

versus



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BRIG PRADEEP KUMAR KAUSHIK (RETD) .....Respondent  
Through: Mr. Rohit Kaushik, Ms. Astha  
Sharma, Mr. Sanjeev Kaushik, Mr.  
Simranjeet Singh Rekhi, and Ms.  
Shriya Mishra, Advocates.

+ **W.P.(C) 6329/2023 & CAV 251/2023, CM APPL. 24864/2023, CM  
APPL. 40362/2023 & CM APPL. 40363/2023**

MANAGING DIRECTOR ARMY WELFARE HOUSING  
ORGANIZATION & ORS. ....Petitioners

Through: Mr. Anand Shankar Jha, Ms.  
Meenakshi Devgan, Mr. Abhilekh  
Tiwari, Mr. Sachin Mintri, Mr. Parvez  
Rahman, Mr. Shubhank Sharma, Hare  
Ram Tiwari, Advs.

versus

BRIG SUSHIL SHARMA .....Respondent  
Through: Mr. Rohit Kaushik, Ms. Astha  
Sharma, Mr. Sanjeev Kaushik, Mr.  
Simranjeet Singh Rekhi, and Ms.  
Shriya Mishra, Advocates.

+ **W.P.(C) 6348/2023 & CM APPL. 24942/2023, CM APPL.  
40366/2023, CM APPL. 40367/2023**

MANAGING DIRECTOR ARMY WELFARE HOUSING  
ORGANIZATION & ORS. ....Petitioners

Through: Mr. Anand Shankar Jha, Ms.  
Meenakshi Devgan, Mr. Abhilekh  
Tiwari, Mr. Sachin Mintri, Mr. Parvez  
Rahman, Mr. Shubhank Sharma, Hare  
Ram Tiwari, Advs.

versus



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LT COL GAURAV BALI

.....Respondent

Through: Mr. Rohit Kaushik, Ms. Astha Sharma, Mr. Sanjeev Kaushik, Mr. Simranjeet Singh Rekhi, and Ms. Shriya Mishra, Advocates.

**CORAM:****HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****JUDGMENT**

1. The Petitioner has filed W.P.(C) No. 6327/2023, 6348/2023, 6329/2023, 6120/2023, 6306/2023, 6325/2023 under Article 226 and 227 of the Constitution of India against the Final Order and Judgment dated 16.03.2023 (*hereinafter referred to as “Impugned Order”*) whereby the NCDRC has dismissed the First Appeals filed by the Petitioner herein with modification in the rate of interest to be paid by the Petitioner, i.e., from 15% to 8% on the deposited amounts of the homebuyers for the purchase of dwelling units in a housing project in Sector 27, Panchkula from the proposed date of possession as per their booking/revised booking letters till 16.07.2014, within 2 months of the order, failing which an interest rate of 12% p.a. will be applicable.

2. In W.P.(C) No. 6327/2023, the Respondent, Brig. Pradeep Kumar Kaushik (Retd.), registered for a Utility Apartment in Sector – 20, Panchkula. However, since the Respondent was in waiting list and was not likely to be allotted the said dwelling unit, the Petitioner vide letter dated 24.10.2005 offered him a confirmed booking for a deluxe apartment in the proposed Project. In October 2007, the Petitioner issued a Project brochure wherein the tentative date of completion of the Project was December 2010.



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The Petitioner handed over the possession of the said dwelling unit to the Respondent on 01.09.2014.

3. In W.P.(C) No. 6348/2023, the Respondent, Lt. Col. Gaurav Bali (Retd.), registered for a different group housing project by the Petitioner on a separate piece of land, and was put in the waiting list. The Petitioner offered the Respondent an option to convert the waitlisted registration into a confirmed booking in the Project. On 17.08.2006, the Petitioner allotted the Respondent a deluxe apartment through a booking letter in the Project. In October 2007, the Petitioner issued a Project brochure wherein the tentative date of completion of the Project was December 2010. The possession of the said dwelling unit was handed over to the Respondent on 01.09.2014.

4. In W.P.(C) No. 6329/2023, the Respondent, Brig. Sushil Sharma (Retd.), registered a deluxe apartment through a booking letter dated 17.08.2006 in the Project. In October 2007, the Petitioner issued a Project brochure wherein the tentative date of completion of the Project was December 2010. The Petitioner handed over the possession of the said dwelling unit to the Respondent on 01.09.2014.

5. In W.P.(C) No. 6120/2023, the Respondent, Col. Ashok Kumar Sood (Retd.) registered for a different group housing project by the Petitioner on a separate piece of land and was in the waiting list. The Petitioner offered the Respondent an option to convert the waitlisted registration into a confirmed booking in the Project. On 09.08.2006, the Petitioner allotted the Respondent a deluxe apartment through a booking letter in the Project. In October 2007, the Petitioner issued a Project brochure which specified the tentative date of completion of the Project to be in December 2010. The



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Petitioner handed over the possession of the said dwelling unit to the Respondent on 01.09.2014.

6. In W.P.(C) No. 6306/2023, the Respondent, Col. Sat Pal Sharma (Retd.), registered for a different group housing project by the Petitioner on a separate piece of land, and was in the waiting list. The Petitioner offered the Respondent an option to convert the waitlisted registration into a confirmed booking in the Project. On 17.08.2006 the Petitioner allotted the Respondent a deluxe apartment through a booking letter in the Project. In October 2007, the Petitioner issued a Project brochure which specified the tentative date of completion of the Project to be in December 2010. The Petitioner handed over the possession of the said dwelling unit to the Respondent on 01.09.2014.

7. In W.P.(C) No. 6325/2023, the Respondent, Col. Rabinder Nath (Retd.), registered for a different group housing project by the Petitioner on a separate piece of land, and was in the waiting list. The Petitioner offered the Respondent an option to convert the waitlisted registration into a confirmed booking in the Project. On 17.08.2006 the Petitioner allotted the Respondent a deluxe apartment through a booking letter in the Project. In October 2007, the Petitioner issued a Project brochure which specified the tentative date of completion of the Project to be in December 2010. The Petitioner handed over the possession of the said dwelling unit to the Respondent on 15.04.2015.

8. Aggrieved by the inordinate delay in construction and handing over of the flats and deficiencies in service of the Petitioner herein, the allottees, i.e., the Respondents herein, approached the State Consumer Forum, Haryana by filing separate complaints in their respective cases. The said complaints



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were disposed of by the State Consumer Forum Haryana *vide* Orders dated 17.04.2018 by passing separate orders in each complaint case by directing the Petitioner herein to pay interest on the tenure of delay in handing over the flats to the Respondents herein. Aggrieved by the Orders dated 17.04.2018, the Petitioner approached the NCDRC by filing the first appeals which were dismissed by the NCDRC *vide* a common order dated 16.03.2023. It is this Order which is under challenge in the present Writ Petitions. The details of each case, viz., the complaint case number, the decided period of delay, interest awarded upon that delay, the appeal filed by the Petitioners herein against each Order, and the Writ Petitions arising from those appeals, are given below for reference:

| <b>Complaint Case filed by the buyers, i.e. the Respondents herein before the State Consumer Forum Haryana</b> | <b>Delay in Handing over of the Flat</b> | <b>Interest Awarded</b> | <b>Appeal filed by the Petitioner herein in NCDRC against the Order passed by the State Consumer Forum, Haryana</b> | <b>Writ Petition filed by the Petitioner against the Order passed by the NCDRC</b> |
|----------------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------------|---------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
| CC No. 251/2016                                                                                                | 2 years 8 months 25 days                 | 15%                     | First Appeal No. 2013/2018                                                                                          | W.P.(C) 6327/2023                                                                  |



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|                    |                                    |     |                               |                   |
|--------------------|------------------------------------|-----|-------------------------------|-------------------|
| CC No.<br>343/2016 | 3 years 4<br>months 8<br>days      | 15% | First Appeal No.<br>2014/2018 | W.P.(C) 6325/2023 |
| CC<br>No.344/2016  | 2 years 11<br>months and<br>7 days | 15% | First Appeal No.<br>2015/2018 | W.P.(C) 6306/2023 |
| CC<br>No.352/2016  | 2 years 8<br>Months and<br>30 days | 15% | First Appeal No.<br>2016/2018 | W.P.(C) 6329/2023 |
| CC No.<br>353/2016 | 2 years 11<br>months 19<br>days    | 15% | First Appeal No.<br>2017/2018 | W.P.(C) 6120/2023 |
| CC No.<br>354/2016 | 2 years 8<br>months 30<br>days     | 15% | First Appeal No.<br>2018/2018 | W.P.(C) 6348/2023 |

9. The NCDRC in the Impugned Order took up First Appeal No. 2013 of 2018 as the lead case to adjudicate upon and passed a common order for the whole batch of abovementioned appeals by reducing the interest from 15% to 8%. The Petitioner has preferred W.P.(C) No. 6327/2023 against the Final Order in First Appeal No. 2013 of 2018. Since the facts and questions of law involved in all the Writ Petitions are similar, except for minor variations in dates of events, amounts, etc., these Writ Petitions will be decided by this judgment, which will be binding on all. Therefore, for the sake of convenience and brevity, this Court will treat W.P.(C) No. 6327/2023 as the



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lead case and consider its facts to adjudicate on the whole batch of present Writ Petitions.

10. Shorn of unnecessary details, the facts leading to the filing of the above-mentioned Petition are as follows:-

- a. The Petitioner released an advertisement dated 01.10.2005 for a group housing project in Sector 27, Panchkula, Haryana. The Respondent applied to purchase the houses in the said Project.
- b. Petitioner being the developer of the said Project provided that the Project will take 3 years to complete, deeming the date of completion to be in 2008. The price for the dwelling unit was set at Rs.33,74,000/- plus registration and application fee, i.e., Rs.90,500/-. In October 2007, the Petitioner issued a Project brochure for the Project which specified the tentative date of completion of the Project to be in December 2010.
- c. The Petitioner incurred delays and price escalations throughout the tenure of development of the Project.
- d. As per the Petitioner, the price escalations in the Project were due to the following instances:
  - i. On 10.02.2005, Haryana Urban Development Authority ("**HUDA**") issued allotment cum demand letter regarding allotment of 42,492 Sq. meters of land for the Project. Further, in interest of the Project, Army Welfare Housing Organisation



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("AWHO") requested for some additional land for the Project. It is stated that *vide* letter dated 24.10.2005, HUDA allotted additional land admeasuring 8136 Sq. meters to AWHO.

- ii. AWHO was required to install 50 litres solar water heating system per dwelling unit. Haryana Renewable Energy Development Agency ("HAREDA") issued a letter wherein the stipulated capacity was increased from 50 to 100 litre per dwelling unit, which consequently affected the Project Cost, as well as delayed the date of completion of the Project.
  - iii. During the construction of the Project, the Government of Haryana imposed new taxes resulting in the increase of cost. In December 2011, HUDA raised a demand of Rs.18.58 Crores towards enhanced compensation of the land from the Petitioner. Cost towards material, labour, and services also increased in due course of time which increased the Project cost.
- e. As per the Petitioner, the incurred delay ensued qua these instances:
- i. Soil investigation was conducted by the Petitioner which resulted in restructuring and preparation of foundation *de-novo* causing substantial delay in commencement of work and the same also attracted additional cost of Rs. 3.66 Crores. The foundation design and drawings were revised by the architects and structural engineers and the same were handed to the contractor for execution in May, 2008.
  - ii. During July-September, 2008, the Project site received torrential rains which resulted in filling up of the dug up foundation of the construction site with water.



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- iii. Pursuant to the Order of the Punjab and Haryana High Court, a ban was imposed on mining in the State of Haryana from March, 2010 and the ban continued till 2012 which consequentially delayed the progress of work.
  - iv. As per the Agreement dated 18.07.2006 entered into between HUDA and AWHO, it was the duty of HUDA to ensure supply of power/electricity line till the periphery of AWHO's complex. AWHO had applied for sanction of electricity load for the Project, but till December 2011 the same was not approved by Uttar Haryana Bijli Vitran Nigam for the reason that the demanded load can be fed only through a 33 KV/66 KV system or two independent 11 KV feeders. AWHO was provided with the electricity connection till the periphery of project complex only by March 2012, causing further delays in the Project.
  - v. AWHO was required to install 50 litres solar water heating system per dwelling unit. HAREDA issued a letter wherein the stipulated capacity was increased from 50 to 100 litres per dwelling unit, which consequently, affected the Project cost as well as delayed the Project completion.
- f. The Respondent paid a total sum of Rs.55,70,000/- to the Petitioner for the purchase of dwelling unit as against the original price of Rs.33,74,000/- along with registration fee of Rs.90,500/-. The Respondent finally took over the possession of his registered dwelling unit in the Project on 01.09.2014, as against the proposed timeline which was mentioned in Project Brochure as December, 2010.



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- g. The Respondent filed a Consumer Complaint bearing No. 251 of 2016 before the State Commission, Haryana, Panchkula, seeking compensation for delay in handing over the possession, and the price escalations imposed upon the complainant for the development of the said Project. The State Commission passed a final judgment dated 17.04.2018 decreeing an interest of 15% for the delay period of 2 years 8 months and 25 days on the amount deposited by the Respondent herein from the date of electricity connection provided to the allottees till the date of possession of the dwelling unit in the Project.
- h. The Petitioner herein moved to the National Commission by filing First Appeal No. 2013 of 2018 against the Order dated 17.04.2018. The National Commission in its Final Order dated 16.03.2023 dismissed the First Appeal No. 2013 of 2018 partially modifying the Order dated 17.04.2018 passed by the State Commission, to the extent that the delay compensation to the Respondents was reduced from 15% *per annum* to 8% *per annum* on their respective deposited amounts from the proposed date of possession as per their booking/revised booking letters. The NCDRC placed reliance on its earlier judgment in Lt. Col. Ajmer Singh (Retd.) vs. Adjutant General & Ors., Revision Petition No. 1982/2014 decided on 16.02.2015, wherein the NCDRC dealt with a different set of allottees in the same Project and came to the conclusion that there was deficiency in



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service and delay in the possession of the dwelling units to the Respondents herein.

- i. It is this Order of the National Consumer Disputes Redressal Commission which is challenged by way of the present Writ Petitions.

11. It is pertinent to mention that the NCDRC had dismissed the complaint filed by certain allottees in the same Project *vide* Judgment dated 06.06.2022 in Major Sandeep Vinayak and Ors. vs. AWHO and Ors., C.C. No. 221 of 2017. The NCDRC in the said Judgment had come to a conclusion that there is no delay in construction. The NCDRC in the said case was of the opinion that the delay has been fully explained and was because of situations far beyond the control of the Petitioner. The relevant extract of the judgment is as follows:-

*“9. I have considered the arguments of the counsel for the parties and examined the record. Supreme Court in Bangalore Development Authority Vs. Syndicate Bank, (2007) 6 SCC 711, has held in the matter of civil construction the time is not the essence of contract. In the present case, Clause 10 of booking letter dated 11.08.2006 provides that possession would be given till end of the year 2010. In the written reply, it has been stated that Occupation Certificate was obtained on 13.08.2013. Thereafter possession was started to be given to the complainant from August, 2013 to September, 2014. So far as delay in construction is concerned, it has been stated that HUDA took 17 months in granting of permission, which was granted on 04.04.2007. Thereafter layout plan was sanctioned and construction was started on 22.10.2007 on the spot. Although the project was vetted by Indian*



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*Institute Technology Delhi, but upon the commencing of the work of laying down foundation number of loose boulders were encountered at the site, due to its proximity with river bed of river Ghaggar. Then in the interest of structural stability, AWHO Commissioned fresh soil investigation reports from various experts such as M/s. Ghuman and Gupta Geotec Consultant. All the experts in their opinion had advised for raft foundation instead of 'isolated footing foundation' then the design and drawing got changed and fresh approval was obtained from the concerned authorities. Thereafter, the construction was stopped due to heavy rain in June 2008 to August 2008. Due to these reasons, the construction was delayed for ten months. There was mining ban imposed by High Court of Panjab and Haryana from 01.03.2010 till May, 2012. Thus, two years two months construction was affected due to shortage of sand, stones and grids etc. Due date of possession, in the present cases where December, 2010 while possession were given since August 2013. Delay was about two years seven months, which has been fully explained above. This Commission in Revision Petition No.1982 of 2014, Lt. Col. Ajmer Singh (Retd.) Vs. Adjutant General and other connected revisions decided on 16.02.2015 accepted explanation for delay of two years six months.*

*10. None of the complainants have raised any objection relating to delayed compensation at the time of taking possession, therefore, they cannot be allowed to raise objection in this respect after such a long time. In such circumstances, I do not find that the complainants are entitled for delayed compensation. AWHO is working on 'no profit no loss' basis and is not a profit making organization. It has realized the amount of increased costs from the complainants time to time, which were factored due to (i) society corpus charges, (ii) floor differential charges, (iii) parking*



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*charges, (iv) enhanced land compensation, (v) imposition of service tax and labour welfare cess since 2010, (vi) price rise of building materials, (vii) change in norms of Haryana Renewable Energy Development Agency.”*

12. The aforesaid judgment dated 06.06.2022 was challenged in the Apex Court by filing Major Sandeep Vinayak and Ors. vs. AWHO and Ors., **Civil Appeal bearing No. 8251/2022**. The Apex Court *vide* Order dated 12.12.2022, disposed of the said appeal by passing the following Order:

*“Delay Condoned.*

*The present appeals relate to 140 original complainants who had approached the National Consumer Disputes Redressal Commission, New Delhi.*

*Having heard Shri Gaurav Agarwal and Shri Sunil Fernandes, learned counsel appearing on behalf of the appellants/original complainants and Shri Tushar Mehta, learned Solicitor General of India appearing on behalf of the respondents and in the peculiar facts and circumstances of the case and to have quietus, we modify the impugned common judgment and order dated 06.06.2022 passed in Consumer Case No.221/2017 and direct that the appellants be paid a sum of Rs.2,00,000/- each by the respondents towards lump sum compensation for the delay in handing over the possession, to be paid, within a period of eight weeks from today.*

*It is made clear that the present order is passed in the peculiar facts and circumstances of the case and the same may not be cited as precedent.*



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*The Appeals stand disposed of in terms of the above accordingly. No costs.”*

13. It is also pertinent to mention that the Judgment of Lt. Col. Ajmer Singh (supra) passed by the NCDRC on 16.02.2015 was challenged in the Apex Court. The Apex Court in AWHO through its Managing Director vs. Lt. Col. Ajmer Singh (Retd) and Ors., SLP (C) Nos. 15118-15122/2015, on 31.03.2016, held in favor of the allottees and declined to interfere with the orders passed by the NCDRC granting compensation. The same reads as under:-

*“We have heard Shri Guru Krishna Kumar, learned senior counsel appearing for the petitioner, who has taken us through the order(s) impugned and other relevant documents.*

*We see no reason, much less, any compelling reason to interfere with the impugned orders passed by the National Commission in exercise of our jurisdiction under Section 136 of the Constitution. The special leave petitions are accordingly dismissed.*

*We, however, extend the time fixed by the National Commission by another two months from today for grant of refunds/adjustments towards interest with the observation that in case the needful is not done within the extended time, the direction issued by the National Commission regarding enhanced rate of interest would take effect. All pending applications shall also stand disposed of in the above terms.”*

14. Learned Counsel for the Petitioner contends that for the very same Project, there are two divergent opinions by the NCDRC in Lt. Col. Ajmer Singh (supra), i.e., Judgment dated 16.02.2015, wherein the NCDRC has



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allowed the claims of the allottees, whereas in the case of Major Sandeep Vinayak (supra), the NCDRC has completely come to a contrary decision by stating that the delay has been fully explained.

15. The Counsel for the Petitioner states that the dismissal of the SLP against the Judgment dated 16.02.2015 of the NCDRC in Col. Ajmer Singh (supra) only indicates that the Apex Court was not inclined to interfere with the aforementioned judgment dated 16.02.2015 under Article 136 of the Constitution of India but in the case of Major Sandeep Vinayak (supra), the order passed by the Apex Court is in a civil appeal. He states that the judgment in Major Sandeep Vinayak (supra) was binding on the NCDRC under Article 141 of the Constitution of India. It is, therefore, contended that the NCDRC ought to have followed the later decision in Major Sandeep Vinayak (supra). He further states that there cannot be two sets of cases wherein, in one set the compensation is fixed at Rs.2 lakhs for each allottee of a dwelling unit, whereas the other set of allottees, have been awarded 8% interest on the deposited amount towards the delayed allotment. He states that in order to bring consistency, the NCDRC could have at best only awarded Rs.2 lakhs as compensation under Article 141 of the Constitution of India.

16. The learned Counsel for the Petitioner also contends that the conclusion of NCDRC that the delay has occurred due to circumstances beyond the control of the Petitioner as found in the judgment of Major Sandeep Vinayak (supra) will apply to all allottees.

17. The learned Counsel for the Petitioner submits that a bare perusal of the various Orders passed by the National Commission, as well as, the Apex Court, with respect to the same Project would demonstrate that the



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Impugned Order passed by the NCDRC has created an anomaly for the Petitioner and as such the Impugned Order deserves to be quashed and set aside.

18. Learned Counsel for the Petitioner also states that the Petitioner organization is a 'no profit no loss' society working to provide affordable housing to army personnel, retired officers, war widows, and battle casualties of the Indian Army. The rigors of Consumer Protection Act, 1986 cannot be made applicable to the AWHO as, unlike, commercial builders and real estate companies, the AWHO does not generate any surplus or profit from the services rendered by them.

19. *Per contra*, the learned counsel for the Respondent states that the present Writ Petition is not maintainable against the Order passed by the NCDRC and the only remedy available to the Petitioner was to approach the Apex Court by filing an appeal under Article 136 of the Constitution of India as NCDRC is a Court in itself and a writ petition cannot lie against the decision of a Court.

20. The Counsel for the Respondent further submits that the Apex Court in AWHO through its Managing Director (supra) held in favor of the allottees and had declined to interfere with the orders passed by the NCDRC granting compensation. He states that the Petitioner also filed a review against the above-mentioned judgment of the Apex Court which was dismissed by the Apex Court finalizing the decree in favour of the allottees. The NCDRC in the Impugned Order passed a similar decree and the same should not be interfered by this Court.

21. He also contends that the judgment in Major Sandeep Vinayak (supra) cannot be termed as law under Article 141 of the Constitution of India. He



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states that only the *ratio* of a judgment passed by the Apex Court is binding under Article 141 of the Constitution of India and not the whole order. He further places reliance on various judgments passed by the Apex Court to substantiate his contention. He states that the Order has been passed by the Apex Court under Article 142 of the Constitution of India and states that it cannot be treated as a precedent.

22. Heard the Counsels for both sides and perused the material available on record.

23. The issue as to whether the present Petitions are maintainable or not is no longer *res integra* as it is covered by the Judgment of the Apex Court in Universal Sompo General Insurance Company Limited v. Suresh Chand Jain and Another, (2024) 9 SCC 148, wherein the Apex Court after considering the various decisions, has observed as under:

*“39. In the aforesaid view of the matter, we have reached to the conclusion that we should not adjudicate this petition on merits. We must ask the petitioner herein to first go before the jurisdictional High Court either by way of a writ application under Article 226 of the Constitution or by invoking the supervisory jurisdiction of the jurisdictional High Court under Article 227 of the Constitution. Of course, after the High Court adjudicates and passes a final order, it is always open for either of the parties to thereafter come before this Court by filing special leave petition, seeking leave to appeal under Article 136 of the Constitution.”*

24. After holding that the instant Petition is maintainable, this Court is of the opinion that though the present Petitions are styled as one under Article



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226 of the Constitution of India, they actually fall under Article 227 of the Constitution of India.

25. Learned Counsel for the Petitioner has only pointed out the differences in findings by the State Commission regarding the inordinate delay. Learned Counsel for the Petitioner is right in contending that the delay ranges from around 1 year to 3 years. In Col. Ajmer Singh (supra) the NCDRC was of the opinion that there was a delay of 7 years in handing over the possession out of which 5 years and 6 months were deducted. Whereas, in the instant case, the finding of facts by the NCDRC indicates that there was an effective delay of about 2 years 8 months.

26. In any event, the facts of the case reveal that there has been delay in construction of the dwelling units. The scope of interference while exercising jurisdiction under Article 227 of the Constitution of India is well settled. The power of the High Court for exercising its jurisdiction under Article 227 of the Constitution of India has been succinctly explained by the Apex Court in Estralla Rubber v. Dass Estate Private Limited, **2001 (8) SCC 97**, wherein the Apex Court has observed as under:-

*"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or*



*tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if 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, which the court or tribunal has come to.*

*7. This Court in Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand [(1972) 1 SCC 898 : AIR 1972 SC 1598] in AIR para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case Waryam Singh v. Amarnath [AIR 1954 SC 215 : 1954 SCR 565] . This Court in Bathutmal Raichand Oswal v. Laxmibai R. Tarte [(1975) 1 SCC 858 : AIR 1975 SC 1297] has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order."*



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(emphasis supplied)

27. The scope of interference under Article 226 & 227 of the Constitution of India when considering the decisions of the subordinate Court which falls within the jurisdiction of that Court is narrow. The Courts do not go into the excruciating details of the facts and come to a different conclusion to the one arrived at by the subordinate court even if there can be a different conclusion. The Court only interferes if the subordinate Courts have proceeded without there being any evidence or, the findings of the lower Court are so perverse that no Court could have come to that finding.

28. After having perused the judgment of the NCDRC and the State Commission it cannot be said that the findings of the NCDRC are so perverse that it warrants interference by this Court. This Court is, therefore, not inclined to interfere with the finding that there has been delay in handing over the possession of the dwelling units.

29. The question which is now left to be considered by this Court is as to whether the NCDRC ought to have followed the Apex Court in Sandeep Vinayak (*supra*) by directing the Petitioner herein to pay Rs.2 lakhs uniformly to each of the Respondents herein or whether the NCDRC was justified in going into the facts of the case and upholding the findings of the State Commission wherein it has been held that there was delay in handing over the dwelling units entitling the allottees to compensation for deficiency in service and inordinate delay in handing over the units and awarding compensation to the Respondents by directing the Petitioner to pay interest at a rate that was granted by the State Commission.



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30. To answer this question, it is necessary to analyze as to whether the Judgment of the Apex Court in Major Sandeep Vinayak (*supra*) which has been passed by the Apex Court while exercising its jurisdiction under Article 142 of the Constitution of India is law under Article 141 of the Constitution of India or not.

31. Article 141 of the Constitution of India states that the law declared by the Apex Court is binding on all Courts within the territory of India. Article 141 of the Constitution of India reads as under:

***“141. Law declared by Supreme Court to be binding on all courts.—The law declared by the Supreme Court shall be binding on all courts within the territory of India.”***

32. Article 142 of the Constitution of India, on the other hand gives power to the Apex Court in the exercise of its jurisdiction to pass any such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.

33. It is well settled that what is binding on the Courts is the *ratio* of a judgment. While explaining as to what is a binding precedent, Justice A. P. Sen in the case of Dalbir Singh v. State of Punjab, (1979) 3 SCC 745 has observed as under:

*“22. ... According to the well-settled theory of precedents every decision contains three basic ingredients:*

*‘(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts;*

*(ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and*



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(iii) judgment based on the combined effect of (i) and (ii) above.’

*For the purposes of the parties themselves and their privies, ingredient (iii) is the material element in the decision for it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from reopening the dispute. However, for the purpose of the doctrine of precedents, ingredient (ii) is the vital element in the decision. This indeed is the ratio decidendi. [R.J. Walker & M.G. Walker : The English Legal System. Butterworths, 1972, 3rd Edn., pp. 123-24.] It is not everything said by a Judge when giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. In the leading case of Qualcast (Wolverhampton) Ltd. v. Haynes [Qualcast (Wolverhampton) Ltd. v. Haynes, 1959 AC 743 : (1959) 2 WLR 510 : (1959) 2 All ER 38 (HL)] it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based. The other two elements in the decision are not precedents. The judgment is not binding (except directly on the parties themselves), nor are the findings of facts. This means that even where the direct facts of an earlier case appear to be identical to those of the case before the court, the Judge is not bound to draw the same inference as drawn in the earlier case.”*

34. In the same vein, in Secunderabad Club v. Commissioner of Income Tax, **2023 SCC OnLine SC 1004**, the Apex Court has held as under:-



*“13. It is a settled position of law that only the ratio decidendi of a judgment is binding as a precedent. In B. Shama Rao v. Union Territory of Pondicherry, AIR 1967 SC 1480\*, it has been observed that a decision is binding not because of its conclusion but with regard to its ratio and the principle laid down therein. In this context, reference could also be made to Quinn v. Leathem [1901] AC 495 (HL), wherein it was observed that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are found. In other words, a case is only an authority for what it actually decides.*

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*15. In the leading case of Qualcast (Wolverhampton) Ltd. v. Haynes [1959] AC 743, it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based. The other two elements in the decision are not precedents. A judgment is not binding (except directly on the parties to the lis themselves), nor are the findings of fact. This means that even where the direct facts of an earlier case appear to be identical to those of the case before the court, the judge is not bound to draw the same inference as drawn in the earlier case.*

*16. The legal principles guiding the decision in a case is the basis for a binding precedent for a subsequent case, apart from being a decision which binds the parties to the case. Thus, the principle underlying the decision would be binding as a precedent for a subsequent case. Therefore, while applying a decision to a later case, the court dealing with it has to carefully ascertain the principle laid down in the previous*



*decision. A decision in a case takes its flavour from the facts of the case and the question of law involved and decided. However, a decision which is not express and is neither founded on any reason nor proceeds on a consideration of the issue cannot be deemed to be law declared, so as to have a binding effect as is contemplated under article 141, vide State of Uttar Pradesh v. Synthetics and Chemicals Ltd. (1991) 4 SCC 139\*. Article 141 of the Constitution states that the law declared by the Supreme Court shall be binding on all the courts within the territory of India. All courts in India, therefore, are bound to follow the decisions of Supreme Court. This principle is an aspect of judicial discipline.*

***17. If a decision is on the basis of reasons stated in the decision or judgment, only the ratio decidendi is binding. The ratio or the basis of reasons and principles underlying a decision is distinct from the ultimate relief granted or manner of disposal adopted in a given case. It is the ratio decidendi which forms a precedent and not the final order in the judgment, vide Sanjay Singh v. Uttar Pradesh Public Service Commission (2007) 3 SCC 720. Therefore, the decision applicable only to the facts of the case cannot be treated as a binding precedent.***

***18. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to individuals as to the consequences of transactions forming part of daily affairs. Thus, what is binding in terms of article 141 of the Constitution is the ratio of the judgment and as already noted, the ratio decidendi of a judgment is the reason assigned in support of the conclusion. The reasoning of a judgment can be discerned only upon reading of a judgment in its entirety and the same has to be culled out thereafter. The ratio of the case has to***



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*be deduced from the facts involved in the case and the particular provision(s) of law which the court has applied or interpreted and the decision has to be read in the context of the particular statutory provisions involved in the matter. Thus, an order made merely to dispose of the case cannot have the value or effect of a binding precedent.*

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***24. In view of the aforesaid discussion, we think that we cannot accept the argument advanced by learned senior counsel, Sri Datar, for the following reasons : firstly, the order in Cawnpore Club is not on the basis of any reasoning or a deduction made as to whether on the interest earned on fixed deposits made by a club in a bank, Income-tax would be attracted or not. In the absence of any deduction or reasoning or analysis, the said order cannot carry precedential value so as to be binding on this court in a subsequent case. This is because there is no discernible ratio decidendi in the said order. Of course, the said order would bind the parties to the case. While carefully reading the order passed by this court in Cawnpore Club, it can be discerned that the High Court had clearly spelt out that in the case of income earned from letting out of rooms/property to its members, the same would not be subjected to tax. On the aforesaid aspect, the Revenue had not filed any appeal before this court, and therefore, on that aspect the matter should conclude in favour of the assessee therein, i. e., Cawnpore Club. Secondly, without going into the other aspects of the case, this court simply noted that the assessee therein (Cawnpore Club) could not be taxed on the principle of mutuality, therefore, it would not serve any purpose to proceed with the appeals on the other questions. What those other questions were has not been spelt out in the order nor have reasons been***



*assigned as to on what aspect or activities of the said club and its transactions the principle of mutuality would apply. In the absence of there being any clear indication in the discussion or analysis and there being a simple closure of a case, it would clearly imply that the doctrine of mutuality would apply only to those activities to which it would normally apply. That is different from saying that even in the case of income earned by a club from non-members or income earned from investment made by a club in fixed deposits in a bank would attract the principle of mutuality and therefore, no tax is payable. Thirdly, if an order of this court is brief and meant only for the purpose of closure of the controversy involved in a particular case and with a view to conclude the case, undoubtedly, such an order is binding on the parties to the said order, but in our view, it cannot act as a precedent for subsequent cases such as the present one with which we are dealing.”*

(Emphasis supplied)

35. On the other hand, the issue as to whether an order of the Apex Court passed under Article 142 of the Constitution of India is a precedent or not, the Apex Court in State of Punjab & Ors. v. Rafiq Masih (Whitewasher), (2014) 8 SCC 883, has held as under:-

*“12. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice-oriented approach as against the strict rigours of the law. The directions issued by the Court can normally be categorised into one, in the nature of moulding of relief and the other, as the declaration of law. “Declaration of law” as contemplated in Article 141 of the Constitution: is the speech express or necessarily*



*implied by the highest court of the land. This Court in Indian Bank v. ABS Marine Products (P) Ltd. [(2006) 5 SCC 72] , Ram Pravesh Singh v. State of Bihar [(2006) 8 SCC 381 : 2006 SCC (L&S) 1986] and in State of U.P. v. Neeraj Awasthi [(2006) 1 SCC 667 : 2006 SCC (L&S) 190] has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Court has compartmentalised and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case.*

36. In Indian Bank v. ABS Marine Products (P) Ltd, (2006) 5 SCC 72, the Apex Court has held as under;-

*“26. One word before parting. Many a time, after declaring the law, this Court in the operative part of the judgment, gives some directions which may either relax the application of law or exempt the case on hand*



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*from the rigour of the law in view of the peculiar facts or in view of the uncertainty of law till then, to do complete justice. While doing so, normally it is not stated that such direction/order is in exercise of power under Article 142. It is not uncommon to find that courts have followed not the law declared, but the exemption/relaxation made while moulding the relief in exercise of power under Article 142. When the High Courts repeatedly follow a direction issued under Article 142, by treating it as the law declared by this Court, incongruously the exemption/relaxation granted under Article 142 becomes the law, though at variance with the law declared by this Court. The courts should therefore be careful to ascertain and follow the ratio decidendi, and not the relief given on the special facts, exercising power under Article 142. One solution to avoid such a situation is for this Court to clarify that a particular direction or portion of the order is in exercise of power under Article 142. Be that as it may.”* (Emphasis supplied)

37. The Apex Court in Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197 has observed as under:

*“30. It is well settled that a judgment is a precedent for the issue of law which is raised and decided. It is the ratio decidendi of the case which operates as a binding precedent. As observed by this Court in State of Punjab v. Surinder Kumar [State of Punjab v. Surinder Kumar, (1992) 1 SCC 489 : 1992 SCC (L&S) 345] , what is binding on all courts is what the Supreme Court says under Article 141 of the Constitution, which is declaration of the law and not what it does under Article 142 to do complete justice.*



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38. A perusal of the aforesaid judgments passed under Article 141 & 142 of the Constitution of India shows that a judgment rendered by the Apex Court is not binding in its entirety. It is only the *ratio decidendi* part of the judgment which is binding and shall be taken into consideration while deciding questions of law based on identical issues and facts. A *consent order*, *obiter dicta*, *per-incuriam* judgment and *sub silentio* order are some of the exceptions to this doctrine of law of precedents.

39. In view of the law laid down by the Apex Court, the Judgment in Major Sandeep Vinayak (*supra*) is not law under Article 141 of the Constitution of India in the absence of *ratio* for its findings. On the other hand, the Apex Court has dismissed the SLP against the judgment of Lt. Col. Ajmer Singh (*supra*) which indicates that the Apex Court has only decided not to interfere with the judgment of NCDRC in exercise of its jurisdiction under Article 136 of the Constitution of India. Viewed in this manner, this Court does not find any infirmity in the decision of the NCDRC in following its earlier judgment rendered in Lt. Col. Ajmer Singh (*supra*). This Court is of the opinion that there is no conflict in the two Orders of the Apex Court. The dismissal of SLP in AWHO through its Managing Director (*supra*) is not on merits and at the same time the decision in Major Sandeep Vinayak (*supra*) is on the facts of that case as stated above and not a binding precedent. The NCDRC was therefore justified in proceeding with each case in its own merits.

40. The State Commission and the NCDRC have unanimously held that there is a delay in handing over the possession of the dwelling unit. It is well settled that each case is decided on the strength of the facts as placed before



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the Court, the evidence placed before the Court, and the appreciation of evidence by the Court.

41. On perusal of the NCDRC's Order in Lt. Col. Ajmer Singh (supra), it is found that the allottees were given possession of the dwelling unit in July, 2013. However, in the lead case the Respondent was given the possession of the dwelling unit on 01.09.2014. There is a further delay of 14 months caused by the Petitioner in handing over possession of the dwelling unit to the Respondent.

42. The NCDRC in the Impugned Order followed the directives of Lt. Col. Ajmer Singh (supra). The NCDRC in Col. Ajmer Singh has explained the rationale behind the computation of the delay period. The relevant extract is as follows:-

*“26. In the result, we find that the action of the OPs is below the belt to some extent. The booking letter dated 11.08.2006 issued in favour of the complainants indicating that proposed date of completion is three years’, subject to acceptance of the tenders as the Tender is again, yet to commence. The possession was given to the complainants in July, 2013. There is total delay of seven years. Out of these three years, the prescribed period, plus two years’ of mining ban, stand adjusted. There is delay of two years only, out of which, we give grace period of six months. The OPs are guilty of constructing the flats by a period of one-and-a-half years’. The people are exasperated by unnecessary delays. Due to delay, the complainants also, could not get the rebate detailed above.”*

43. In the aforesaid Judgment, the NCDRC calculated the delay from the date of issuance of the booking letter to the allottee, till the date of hand-



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over of the possession of the dwelling unit. The said period amounts to 7 years. Out of the 7 years, the following were deducted: -

- i. 3 years for the proposed period of completion,
- ii. 2 years of mining ban,
- iii. 6 months of discretionary grace period.

44. In the present case, the booking letter was issued to the Respondent in the lead case on 11.08.2006 and to other Respondents on other dates. However, the possession was handed over to the Respondents on various dates and, therefore, the conclusion of the Court that there cannot be delay in different cases, cannot be accepted. Following the rationale as set out in Lt. Col. Ajmer Singh (supra), there is an effective delay ranging around 1-3 years in each of the case. This Court, therefore, in exercise of its Writ jurisdiction, does not deem it appropriate to change the rate of interest or the tenure of delay on the ground that there is a delay ranging around 1-3 years and is not inclined to interfere with the Order of the NCDRC.

45. The Writ Petitions are dismissed as being devoid of any merit. The Petitioner is directed to pay delay compensation of 8% p.a. to the Respondent as per the terms dictated in the Impugned Order. Pending application(s), if any, stand disposed of.

**SUBRAMONIUM PRASAD, J**

**MAY 21, 2025**

hsk/mt