

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2010

(Arising out of SLP(C) No. 21740 of 2007)

Chandigarh Housing Board

... Appellant

Versus

Avtar Singh and others

... Respondents

WITH

C.A. No. _____ of 2010 [arising out of SLP(C) No.831/2008]
C.A. No. _____ of 2010 [arising out of SLP(C) No.832/2008]
C.A. No. _____ of 2010 [arising out of SLP(C) No.834/2008]
C.A. No. _____ of 2010 [arising out of SLP(C) No.24815/2007]
C.A. No. _____ of 2010 [arising out of SLP(C) No.422/2008]
C.A. No. _____ of 2010 [arising out of SLP(C) No.25308/2007]
C.A. No. _____ of 2010 [arising out of SLP(C) No.25310/2007]
C.A. No. _____ of 2010 [arising out of SLP(C) No.25313/2007]
C.A. No. _____ of 2010 [arising out of SLP(C) No.25315/2007]
C.A. No. _____ of 2010 [arising out of SLP(C) No.810/2008]
C.A. No. _____ of 2010 [arising out of SLP(C) No.829/2008]
C.A. No. _____ of 2010 [arising out of SLP(C) No.830/2008]
C.A. No. _____ of 2010 [arising out of SLP(C) No.833/2008]
C.A. No. _____ of 2010 [arising out of SLP(C) No.836/2008]
C.A. No. _____ of 2010 [arising out of SLP(C) No.837/2008]
C.A. No. _____ of 2010 [arising out of SLP(C) No.839/2008]
C.A. No. _____ of 2010 [arising out of SLP(C) No.841/2008]
C.A. No. _____ of 2010 [arising out of SLP(C) No.864/2008]
C.A. No. _____ of 2010 [arising out of SLP(C) No.1011/2008]
C.A. No. _____ of 2010 [arising out of SLP(C) No.1030/2008]
C.A. No. _____ of 2010 [arising out of SLP(C) No.1309/2008]
C.A. No. _____ of 2010 [arising out of SLP(C) No.1311/2008]
C.A. No. _____ of 2010 [arising out of SLP(C) No.1343/2008]
C.A. No. _____ of 2010 [arising out of SLP(C) No.1344/2008]

J U D G M E N T

G.S. Singhvi, J.

1. Leave granted.

2. With a view to promote private housing and optimum utilisation of the land in Chandigarh by constructing multi-storeyed structures, the Administrator, Union Territory, Chandigarh framed a scheme called “Chandigarh Allotment of Land to Co-operative House Building Societies Scheme, 1991” (for short, ‘the 1991 Scheme’) for allotment of land to Co-operative House Building Societies (for short, ‘the Societies’) through Chandigarh Housing Board (for short, ‘the Board’). The opening paragraph of the 1991 Scheme and clauses 3, 4 and 6 to 12 thereof read as under:

“No. UTFI(3)-91/5214 – With view to promote private housing and optimum utilization of land by constructing multistoried structures, the Administrator, Union Territory, Chandigarh, is pleaded to intake the following scheme regulating allotment of land to the Co-operative House Building Societies, in the Union Territory, Chandigarh, namely:-

- | | | | |
|----|-----|-----|-----|
| 1. | xxx | xxx | xxx |
| 2. | xxx | xxx | xxx |
| 2. | xxx | xxx | xxx |

3. The Chandigarh Administration may conduct survey to assess the demand by inviting applications on prescribed forms available from the Chief Executive Officer, Chandigarh

Housing Board alongwith 25% of the premium of land to be applied for as earnest money and proof that the Society has sufficient funds and resources to pay the balance of premium of land and to undertake construction work on the land if allotted to them through the Chandigarh Housing Board. Such Survey shall, however, not be construed as a commitment for allotment of land in any way.

4. The Chandigarh Administration shall allot land on chunk basis to the Chandigarh Housing Board for its further allotment to the eligible Co-operative House Building Societies from whom applications were invited under clause 3 above, having sufficient funds and resources to the satisfaction of the Estate Officer, on Lease Hold Basis for 99 years for the construction of multistoreyed structures/dwelling units (hereinafter called DU) and their allotment to its eligible members on the terms and conditions to be laid down in the allotment letter and lease deed. The land so allotted shall be planned in consultation with the Chief Architect and Secretary, Architecture Department, Union Territory, Chandigarh and developed by the Engineering Department as usual. The proposed land shall be got sanctioned from the Chief Administrator, Chandigarh as per the provisions of the Punjab Capital (Development and Regulation) Building Rules, 1952 as amended to date. The seniority of society may be determined from registration Number and date. The Administrator may allot land to the societies within the limits of Union Territory, Chandigarh subject to the fulfillment of provisions of the Scheme and the Capital of Punjab (Development and Regulation) Act, 1952 as amended from time to time and the rules made thereunder including the Chandigarh Lease Hold of Sites and Building Rules, 1973 (as amended from time to time). The society and its members shall be jointly and severally responsible for payment of premium including instalments and ground rent and for complying with terms and conditions, rules and regulations and the provisions of the Act referred to above. The minimum quantum of land that can be allotted is one acre and 40 to 60 number of Dwelling Units (as proved by the Chief Architect) are to be provided by the Society per acre. The Chandigarh Administration may fix cut off date for the purpose of allotment of land to the Societies as well as to members.

6. Eligibility. - A society may be considered eligible for allotment of land if it is duly registered with the Registrar, Co-operative Societies, Union Territory, Chandigarh functioning property having sufficient funds/resources to pay the premium, to undertake the construction work, to complete it is stipulated period, and that each of its members fulfills the following conditions:-

- (i) He is a bona fide resident of the Union Territory of Chandigarh and should be residing in Union Territory, Chandigarh atleast for last two years on the date of the allotment of land to the Society;
- (ii) He is an employee of the Central Government/Corporation owned or controlled by Central Government stationed at Chandigarh on the date of notification of Scheme or has served in the past at Chandigarh, or
- (iii) He is an employee of Union Territory Administration or the States of Punjab and Haryana or any Corporation owned or controlled by Union Territory or State Governments referred to above and is either serving at Chandigarh on the date of notification of the Scheme or has served in the past; or
- (iv) He is a retired from the Government or Corporation referred to at (ii) and (iii) above and residing at Chandigarh.

An applicant member may be eligible for allotment of dwelling unit in accordance with his monthly income i.e. one dwelling unit out of the dwelling units constructed per acre, as per category given below:-

- | | | | |
|----|-----|----------------------------|--------------|
| A. | (1) | 25 Dwelling Units per acre | Category "A" |
| | (2) | 35 Dwelling Units per acre | Category "B" |
| | (3) | 45 Dwelling Units per acre | Category "C" |

(The density shall not in total exceed 40% of the covered area)

B. Income Group

Members having monthly income of Rs.5,0001 and above “A”

Members having monthly income of Rs.2,0001 to 5,000 “B”

Members having monthly income upto Rs.2,000 “C”

Provided that no society shall be eligible for allotment of a site under this scheme if any of its members, their spouses or dependent children already owns, either on free-hold, lease-hold or hire purchase basis, a dwelling unit or a residential house/site/flat at Chandigarh, Manimajra, Panchkula and S.A.S. Nagar (Mohali).

Provided further that not more than one member of a family shall be a member of any such Society and no more than one dwelling unit shall be allotted to one family.

Provided further that no individual/Society shall part with the possession of the land or dwelling unit before the expiry of atleast 5 years from the date of allotment.

7. Grouping of Society/Enrolment of new members.- If any Society has less than 50 members, these shall be grouped together so as to enable the Chandigarh Housing Board to allot atleast one acre of land to a group of Societies.

8. Refund of Earnest Money.- The earnest money shall be refunded to the Society, if any Society cancels its demand before allotment of land. Earnest money shall also be refunded to un-accommodated Societies, if any. No interest shall, however, be payable on any amount which remained deposited with the Estate Officer under this Scheme.

9. Operation of Account/Check thereon.- Every member who applied/have applied to the Society for allotment of a dwelling unit under this Scheme shall pay all the amount in this respect demanded by the Society by means of crossed demand draft payable to the Society. The Society shall deposit it in their account maintained in the Chandigarh State Co-operative Bank Ltd., Sector 22, Chandigarh only. The Society shall not be competent to withdraw any amount so deposited without the prior approval of the Registrar, Co-operative Societies,

Chandigarh Administration, to discharge liabilities of payment of earnest money, instalments, ground rent and for construction purpose in respect of the land to be allotted/allotted to the Society.

10. Construction of dwelling units and allotment thereof.- The Society shall be responsible for completion of building i.e. dwelling units within 3 years from the date of allotment and further allotment of these to their members by draw of lots. However, grouping can be allowed by the Society. Draw of lost shall be witnessed by the authorised officer/officials of Co-operative Department and Estate Office, Chandigarh Administration.

11. Apart from the provisions of this scheme, provision of the Chandigarh Lease Hold of Sites and Building Rules, 1973, as amended from time to time, shall be applicable to the land allotted under this scheme.

12. If at any time any difficulty arises in giving effect to the provisions of this scheme, the Chief Administrator may give directions consistent with the provisions of the scheme as he/she may deem appropriate.”

(emphasis supplied)

3. Fifty three Societies challenged the 1991 Scheme in Writ Petition No.1454 of 1992 filed in the Punjab and Haryana High Court with the following prayer:

- i.) Writ of Certiorari or any other appropriate writ, order of direction in the nature of Certiorari, may be issued thereby quashing the impugned notification No.UTFI (3)-91/5214 dated 28th May, 1991 (Annexure P.4) issued by the Finance Secretary (respondent No.2).
- ii.) Further a writ of Mandamus be issued to the respondent with a direction to give individual and developed plots to the members of the petitioner societies in view of the Scheme of 1983 which is still operative under which plots were/shall be given.

4. By an interim order dated 11.5.1992, the Division Bench of the High Court permitted the Societies to deposit 10% of the tentative price and also recorded the undertaking given by them that if the writ petition is dismissed, they shall deposit the balance amount with interest @ 18% per annum, if they were to accept allotment of flats under the new scheme. The relevant portion of that order is extracted below:

“Learned counsel for the petitioner contends that the rules provide for deposit of only 10% of the amount of the tentative price and the remaining 15% is to be deposited if plots/flats are allotted. In view of this, learned Counsel for the State-Union Territory, Chandigarh does not oppose the prayer of the petitioners for stay to the extent of deposit of 15% of the tentative price. The petitioner shall deposit 10% of the tentative price within the time extended by this court vide order dated 30.5.1992. The petitioners undertake that if the writ petition is dismissed, they shall deposit the remaining amount with interest @ 18% per annum if they accept allotment of flats under the scheme. The Chandigarh Administration shall also refund the amount deposited by the petitioner with interest at the same rate to those petitioners who are not interested in the allotment of flats.”

(emphasis supplied)

5. In view of the aforesaid order, the Societies collected 10% of the tentative price from their members and deposited the same in the bank specified in the 1991 Scheme. Thereafter, the Chief Executive Officer of the Board issued circular-letters dated 3.11.1992 to the Societies indicating the amount deposited by them towards 10% of the earnest money/premium,

the total amount payable by them and also called upon them to furnish the list of eligible members and details of the deposits made on behalf of each member category-wise. This is evident from the following paragraphs of one such letter sent to the Progressive Co-operative House Building Society Limited (respondent No.2 in the lead appeal):

"1. xxx xxx xxx

2. All the co-operative House Building Societies were requested to apply on the prescribed forms and deposit earnest money equal to 25% of the premium on behalf of eligible members for the allotment of land. However, in view of the Hon'ble Punjab & Haryana High Court's order in your case you were required to deposit 10% of the tentative price by 31.5.1992.

3. xxx xxx xxx

4. Your society has deposited a sum of Rs.9,50,000/- representing 10% in respect of 933 members as per details given below:-

Category

A	345
B	529
C	<u>59</u>
	933

6. On the basis of the said strength of the society the land requirement of your society has tentatively been assessed as 125379.05 Sq. Yd. provided that if the final assessment shows that the total number of eligible members in your society is less than the number required for allotment in terms of the category-wise density specified per acre, your society shall be clubbed with one or more of the Societies to attain the optimum number required for allotment of land.

7. The total premium of this land works out to Rs.9,40,34,287/- @ Rs.750/- per Sq. yd.

8. With a view to finalize the matter relating to the allotment of land, the following information may kindly be furnished within 30 days:-

i) List of eligible members i.e. of the members duly approved by Registrar Co-operative Society/Screening Committee.

ii) List of each member giving details of deposits made on his behalf (as on 1.6.1992) category-wise.

9. xxx xxx xxx

10. In view of the above position, you are requested to furnish the information, as indicated in para 8 above, within 30 days from the date of issue of this letter for the purpose of finalizing the assessment of the land requirement of your society.

11. xxx xxx xxx.

A copy of the local plan where land is tentatively proposed to be allotted to your society is also enclosed for information.”

6. After seven months, the Finance Secretary, Chandigarh Administration (hereinafter referred to as ‘the Finance Secretary’) issued

memo dated 9.6.1993 and directed that if any member of the Society was to seek refund, then 10% out of 25% of the earnest money should be deducted as calculated on reduced density. The relevant clause of that memo is reproduced below:

“V(i) 10% of 25% of the premium amount as calculated on reduced density shall be deducted in case members seek refund on any ground what so ever their earnest money deposited with the Chandigarh Housing Board.”

7. The writ petition was finally dismissed by the High Court vide judgment dated 18.12.1996. The last paragraph of the judgment on which the appellant has heavily relied in support of its plea that the members of the Societies are not entitled to claim refund of 18% interest reads as under:

“Before parting, we may observe that in view of the interim order passed by this Court wherein the petitioners were allowed to deposit 10% of the sale consideration while applying for the allotment of plots, the Societies who had deposited 10% of the sale consideration and found eligible for allotment or have been allotted the sites, would be liable to pay the balance 15% of the amount so as to make it 25% as per terms and conditions of the allotment as agreed upon by them, with a further interest at the rate of 18% per annum.”

8. By taking cue from the observations made by the High Court, the Finance Secretary sent memo dated 6.11.1997 to the Chairperson of the Board with the request to accept the balance 15% earnest money from the Societies along with interest at the rate of 18%. Paragraphs 2 and 3 of that letter read as under:

“2. You are requested to accept the balance amount of 15% to complete the 25% earnest money along with the interest @18% p.a. up to date of the High Court order i.e. 18.12.96, from the petitioners of the Co-operative House Building Societies who jointly filed CWP No.1454 of 1992 in the Punjab and Haryana High Court, calculation and imposition of interest would, therefore, be stopped till the possession of land is offered to the Societies.

3. Balance of 25% of the earnest money may be accepted at the original rate. However, it may be made clear to the Societies that balance amount of the premium shall be determined at the rate applicable at the time of actual allotment of land to the Societies.”

9. Thereafter, the Board vide its letter dated 15.12.1997 directed the Societies to deposit the balance 15% earnest money along with 18% interest. The Societies complied with the Board's directive and deposited the amount after collecting the same from their members.

10. Although, the members of the Societies paid the balance earnest money and 18% interest, the Board did not take effective steps for allotment of land to the Societies. This naturally gave rise to an apprehension in their mind that they may have to wait indefinitely for getting the flats. Therefore, some of them including Lieutenant Colonel Avtar Singh (respondent No.1 in the lead appeal) applied through their respective Societies for refund of the amount paid by them by clearly indicating that they were no longer interested in the flats. The Societies forwarded their applications to the Board. Thereupon, Secretary of the Board sent letter dated 11.12.1998 to

the Finance Secretary seeking his guidance in the matter. That letter reads as under:

“CHANDIGARH HOUSING BOARD
CHANDIGARH

No.HB(s)-GAO-AOI-98/22741

Dated:11/12/98

To

The Finance Secretary,
Chandigarh Administration,
Chandigarh.

Subject: Refund of Earnest Money.

Sir,

It is stated that the Board has been making refunds to the members of societies by deducting 10% of the revised density in terms of the Chandigarh Administration letter No.30/11/FTI-31-93/5149 dated (copy enclosed).

As per instruction issued vide your letter No.5158-UTIF (4) 97/20685 dated 6.11.1997, the Board demanded balance 15% to complete 25% earnest money alongwith interest @ 18% p.a. for the period from 1.6.1992 to 18.12.1996 from the petitioner societies. Now some of the societies after paying the above amount of earnest money and interest have sought refund in respect of their certain members. The instructions of Chandigarh Administration dated 9.6.1993 provide for refund of earnest money after forfeiting 10% of revised density but no guidelines are available with the Board whether it should also refund the interest paid by the members for the period 1.6.1992 to 18.12.1996 or not. You are requested to decide the matter and decision taken may kindly be conveyed at the earliest to decide such pending cases.

Yours faithfully,

Secretary,
Chandigarh Housing Board.”

11. However without waiting for the decision of the Finance Secretary, the Chief Accounts Officer of the Board suo motu remitted the amount of earnest money to the Societies after deducting 10% in accordance with the instructions issued by the Finance Secretary vide memo dated 9.6.1993 and directed that the same be paid to the members.

12. In the meanwhile, the Finance Secretary constituted a committee consisting of Chief Executive Officer of the Board, Officer on Special Duty (CP), Chandigarh Administration and Joint Registrar, Co-operative Societies, Chandigarh to look into various pending issues of the Societies. After considering the recommendations of the committee and guidelines given by the Deputy Commissioner-cum-Estate Officer, the Finance Secretary issued memo dated 9.3.2000, the relevant portions of which are reproduced below:

“7. Full refund of earnest money will hence forth be made to the societies/and its members without forfeiting 10% of the 25% earnest money deposited.

11. The interest paid by the Societies on the earnest money deposited with the Board in pursuance of High Court’s judgment dated 18.12.96 is not to be refunded if the Society seek refund of earnest money as a whole or in respect of any member, as it is not part of the earnest money.”

13. The members of the Societies, who felt aggrieved by the action of the Board to forfeit 10% earnest money and the direction given by the Finance

Secretary not to refund 18% interest, filed complaints under Section 12 of the Consumer Protection Act, 1986 (for short, 'the Act'). They specifically averred that till the making of applications for refund, the Board had not allotted land to the Societies. They pleaded that action and decision complained against were not only contrary to the provisions of the Chandigarh Lease Hold of Sites and Buildings Rules, 1973 (for short, 'the 1973 Rules'), the 1991 Scheme but were also discriminatory inasmuch as the applications made by Kuldip Singh son of Gurdin Singh and Smt. Subh Lata w/o Shri Tarlochan Singh for refund of the amount was accepted without any deduction but in their cases 10% of the earnest money and 18% interest were arbitrarily forfeited.

14. The Finance Secretary, Chandigarh Administration, through whom the Union of India was impleaded as a party to the complaints did not file written statement and it was left to the Board to contest the complaints. In the written statement filed on behalf of the Board, an objection was raised to the very maintainability of the complaints on the ground that there was no privity of contract between the complainants and the Board. On merits, it was pleaded that there was no deficiency in service or negligence on the Board's part and the provisions of the Act cannot be invoked by the complainants. It was further pleaded that the decision of the Chandigarh Administration not to refund 18% amount paid by the members of the

Societies was in consonance with the 1991 Scheme and without challenging the same, the complainants were not entitled to any relief. Another plea taken by the Board was that 18% interest was not refunded because it did not form part of the earnest money. The allegation of discrimination was controverted by asserting that in the cases of Shri Kuldip Singh and Smt. Subh Lata, 10% of the 25% earnest money was forfeited in accordance with the instructions dated 29.7.1993 issued by the Finance Secretary but the amount was refunded to them in the month of March 1998.

15. The District Forum noted that till the making of applications by the complainants for refund of the earnest money and 18% interest by specifically mentioning that they were no longer interested in the flats, the Board had not allotted land to the Societies and held that forfeiture of 10% earnest money in terms of the decision contained in memo dated 9.6.1993 and non-refund of 18% interest were contrary to the 1991 Scheme and the 1973 Rules and the same amounted to deficiency in service and unfair trade practice. The District Forum also accepted the plea of discrimination and observed:

“The complainant has also alleged discrimination against him vis-à-vis two other applicants members of OP-2 namely Sh. Kuldeep Singh and Smt. Subh Lata to her. The interest component of their deposits was refunded without its forfeiture. On this point the reply of the OP-1 is round about. It is stated that 10% of 25% of the earnest money of these members was also forfeited as per the instructions dated 29.7.1993 and the

refund was made to them in March 1998. The refund to them had been made vide the OP-1 letters dated 30.3.1998 (Annexure H) and letter dated 17.3.1998 (Annexure I). If we compare these letters with each other and with the pleadings of the complainant and the pleadings of the OP. We find that only 10% of 25% of the earnest money of Smt. Subh Lata and Sh. Kuldeep Singh had been forfeited and not the interest component of their deposits. Therefore, to this extent, the complainant was discriminated against by OP1 vis-à-vis Kuldeep Singh and Subh Lata.”

16. Before the State Commission, it was argued on behalf of the Board that District Forum did not have the jurisdiction to entertain the complaints because it had acted strictly in accordance with the directions given by the Finance Secretary. While rejecting this contention, the State Commission observed that in terms of clause 12 of the 1991 Scheme, the Finance Secretary could give directions in case of difficulty arising in the implementation of the Scheme but he could not have used that power for giving directions in violation of the Rules and the Scheme. The State Commission then held that memo dated 9.6.1993 issued by the Finance Secretary authorizing the Board to deduct 10% of the earnest money was contrary to clause 8 of the 1991 Scheme, which provided for refund of the earnest money without any deduction if the Society was to cancel the demand before allotment of land. The State Commission further held that once the Finance Secretary had issued instructions vide memo dated 9.3.2000 that full refund of earnest money will henceforth be made to the Societies/and its members without forfeiting 10% of the earnest money

already deposited, the Board should have refunded the remaining amount to the complainants and its failure to do so amounted to deficiency in service. The State Commission also opined that the instructions issued by the Finance Secretary to the Board not to refund 18% interest deposited by the members of the Society did not have any legal sanction and the Board committed an illegality by refusing to refund the amount of interest by relying upon clause 11 of memo dated 9.3.2000. In conclusion, the State Commission directed the Board to refund the amount to the complainants along with interest @ 8% per annum. However, the direction given by the District Forum for payment of interest from the amount of earnest money was set aside by the State Commission.

17. The National Commission agreed with the findings and conclusion recorded by the State Commission and dismissed the revisions filed by the Board. The National Commission referred to letter dated 11.12.1998 and Memo dated 9.3.2000 issued by the Finance Secretary, Rule 8 of the 1973 Rules and observed:

“From the letter dated 11.12.1998 and Memo dated 9.3.2000 extracted above, it may be seen that the issue of forfeiture of 10% of 25% of earnest money was under consideration of the Chandigarh Administration since 1998 and the final decision taken is incorporated in the said Memo. The petitioner Housing Board cannot take benefit of the delay on their part in finalizing the said issue to the disadvantage of respondent No.1/complainants. Submission advanced on their behalf about Clause No.7 of the Memo being prospective, therefore,

deserves to be repelled being without any merit. At the cost of repetition it may be mentioned that Clause 7 of the Memo permits full refund of the earnest money to the society and/or to its members. Instructions contained in the letter dated 9.6.93 have no relevance.

Coming to interest issue, by virtue of para 11 of the Scheme of 1991 the Rules of 1973 have been made applicable to the land allotted to the Societies. Neither Rules, 1973 nor Scheme, 1991 vest in the petitioner Housing Board the power to forfeit the interest paid. Moreover there seems to be no justification in forfeiting the interest amount paid on late deposit of 15% of earnest money when the entire amount of earnest money was decided to be paid to the Society and/or its members under the Memo dated 9.3.2000. Amount of interest paid by respondent No.1/Complainant will not fall in the category of interest referred to in para No.8 of the Scheme, 1991. For a below had thus rightly made the order for refund of the interest amount.”

18. The first and foremost argument of Ms. Rachana Joshi Issar, learned counsel for the Board is that the District Forum did not have the jurisdiction to entertain the complaints filed by the members of the Societies because there was no privity of contract between them and the Board. She pointed out that the 1991 Scheme envisaged allotment of land to the Societies and not to their members and argued that they cannot be treated as consumers within the meaning of Section 2(d) of the Act and the Board cannot be held liable for any deficiency in service because it had not entered into any agreement with the members of the Societies for allotment of land/flats. Learned counsel emphasized that the Board had acted in accordance with the directives given by the Finance Secretary vide memos dated 9.6.1993 and

9.3.2000 and argued that the consumer foras committed serious error by granting relief to the members of the Societies ignoring that they had not challenged the offending clauses of those memos. She further argued that the members of the Society did not have the locus to complain against non-refund of 18% interest because they had taken advantage of the interim order passed by the High Court and avoided payment of 15% earnest money.

19. Shri S.S. Khetrapal, learned counsel for the complainants argued that the District Forum did not commit illegality by entertaining the complaints because they were the direct beneficiaries of the 1991 Scheme. Learned counsel submitted that the members of the Societies were compelled to file complaints because the Board did not allot land to the Societies even after deposit of the balance earnest money and 18% interest. Shri Khetrapal emphasized that the Chandigarh Administration and the Board were not empowered to forfeit 10% earnest money or withhold refund of 18% interest because the land had not been allotted to the Societies till the making of applications for refund and filing of the complaints. Learned counsel relied upon clause 7 of memo dated 9.3.2000 in terms of which the Board was required to refund the earnest money to the Societies/their members without forfeiting any portion thereof and argued that the direction given by the State Commission for refund of the forfeited portion of the earnest money and

18% interest, which was upheld by the National Commission does not suffer from any legal infirmity.

20. Before proceeding further, we deem it proper to mention that arguments in these appeals were heard and the judgment was reserved on 16.8.2010. Thereafter, the case was listed in the mentioning list on 7.9.2010 because the Court wanted to find out from the learned counsel for the Board whether land had been allotted to the Societies till the making of applications by their members for refund of the earnest money and 18% interest. On 7.9.2010, the case was adjourned to 9.9.2010 at the request of learned counsel for the Board. On the next date, learned counsel produced xerox copy of letter dated 3.11.1992 sent by the Board to the President, Progressive Co-operative House Building Society and a three-page note. She also disclosed that allotment letters were issued to the Societies sometime in 2002.

21. We have considered the respective arguments and submissions. The question which calls for determination in these appeals is whether the members of the Societies, who would have been benefited by allotment of land under the 1991 Scheme were consumer within the meaning of Section 2(d) of the Act and the District Forum had the jurisdiction to entertain the complaints filed by them for refund of 10% earnest money forfeited by the

Board and 18% interest paid by them in the light of the orders passed by the High Court in Writ Petition No.1454/1992.

22. The definitions of the terms 'consumer', 'deficiency' and 'service' contained in Section 2(d), (g) and (o), which have bearing on the decision of these appeals read as under:

“2. Definitions. - (1) In this Act, unless the context otherwise requires,—

(d) "consumer" means any person who—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes;

Explanation.— For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the

purposes of earning his livelihood by means of self-employment

(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service

(o) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service”

23. The first part of the definition of `consumer` refers to the buyer of goods and user thereof by a person other than buyer but does not include a person who obtains such goods for resale or for any commercial purpose. The second part of the definition refers to a person who hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes the beneficiary of such services other than the person who hires or avails of the services but does not include a person who avails such services for commercial purpose. The term `deficiency` means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law by a person in

pursuance of a contract or otherwise in relation to any service. The term 'service' means service of any description which is made available to potential users and includes the provision of facilities in relation to banking, financing, insurance, transport, processing, supply of electrical and other energy, boarding or lodging, housing construction, entertainment, amusement etc. However, the services rendered free of charge or under a contract of personal service are excluded from the definition of term 'service'.

24. The question whether the consumer foras can entertain a complaint in the matter of allotment of plot or construction of a flat by statutory authority was considered by a two-Judge Bench of this Court in **Lucknow Development Authority v. M.K. Gupta** (1994) 1 SCC 243, in the backdrop of challenge to the orders passed by the National Commission which had awarded damages to the respondents on account of delayed delivery of possession of the houses. The Bench observed that the nature of 'complaint' which can be filed under clause 2(c) of the Act is for unfair trade practice or restrictive trade practice adopted by any trader or for the defects suffered for the goods bought or agreed to be bought and for deficiency in service hired or availed of or agreed to be hired or availed of, by a complainant i.e. a consumer or any voluntary consumer association registered under the Companies Act, 1956 or under any law for the time being in force or the

Central Government or any State Government. The Bench then noted that the definition of 'consumer' is in two parts and proceeded to observe:

“The first deals with goods and the other with services. Both parts first declare the meaning of goods and services by use of wide expressions. Their ambit is further enlarged by use of inclusive clause. For instance, it is not only purchaser of goods or hirer of services but even those who use the goods or who are beneficiaries of services with approval of the person who purchased the goods or who hired services are included in it. The legislature has taken precaution not only to define 'complaint', 'complainant', 'consumer' but even to mention in detail what would amount to unfair trade practice by giving an elaborate definition in clause (r) and even to define 'defect' and 'deficiency' by clauses (f) and (g) for which a consumer can approach the Commission. The Act thus aims to protect the economic interest of a consumer as understood in commercial sense as a purchaser of goods and in the larger sense of user of services. The common characteristics of goods and services are that they are supplied at a price to cover the costs and generate profit or income for the seller of goods or provider of services. But the defect in one and deficiency in other may have to be removed and compensated differently. The former is, normally, capable of being replaced and repaired whereas the other may be required to be compensated by award of the just equivalent of the value or damages for loss.”

The Court repelled the argument that the Act is confined to movable goods only and observed that the consumer foras have jurisdiction to deal with complaints of deficiency of service in relation to immoveable properties. The Court referred to the definition of term 'service' as amended in 1993 to cover 'housing construction' and observed:

“It is in three parts. The main part is followed by inclusive clause and ends by exclusionary clause. The main clause itself

is very wide. It applies to any service made available to potential users. The words 'any' and 'potential' are significant. Both are of wide amplitude. The word 'any' dictionaryally means 'one or some or all'. In *Black's Law Dictionary* it is explained thus, "word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and the subject-matter of the statute". The use of the word 'any' in the context it has been used in clause (o) indicates that it has been used in wider sense extending from one to all. The other word 'potential' is again very wide. In *Oxford Dictionary* it is defined as 'capable of coming into being, possibility'. In *Black's Law Dictionary* it is defined as "existing in possibility but not in act. Naturally and probably expected to come into existence at some future time, though not now existing; for example, the future product of grain or trees already planted, or the successive future installments or payments on a contract or engagement already made." In other words service which is not only extended to actual users but those who are capable of using it are covered in the definition. The clause is thus very wide and extends to any or all actual or potential users. But the legislature did not stop there. It expanded the meaning of the word further in modern sense by extending it to even such facilities as are available to a consumer in connection with banking, financing etc. Each of these are wide-ranging activities in day to day life. They are discharged both by statutory and private bodies. In absence of any indication, express or implied there is no reason to hold that authorities created by the statute are beyond purview of the Act. When banks advance loan or accept deposit or provide facility of locker they undoubtedly render service. A State Bank or nationalised bank renders as much service as private bank. No distinction can be drawn in private and public transport or insurance companies. Even the supply of electricity or gas which throughout the country is being made, mainly, by statutory authorities is included in it. The legislative intention is thus clear to protect a consumer against services rendered even by statutory bodies. The test, therefore, is not if a person against whom complaint is made is a statutory body but whether the nature of the duty and function performed by it is service or even facility."

(emphasis supplied)

The Court then considered the question whether public authorities are amenable to the jurisdiction of the consumer foras and answered the same in affirmative. An ancillary issue considered by the Court was whether housing construction or building activity carried on by a private or statutory body was service within the meaning of Section 2(o) as it stood prior to inclusion of the expression 'housing construction' in the definition and it was observed:

“As pointed out earlier the entire purpose of widening the definition is to include in it not only day to day buying and selling activity undertaken by a common man but even such activities which are otherwise not commercial in nature yet they partake of a character in which some benefit is conferred on the consumer. Construction of a house or flat is for the benefit of person for whom it is constructed. He may do it himself or hire services of a builder or contractor. The latter being for consideration is service as defined in the Act. Similarly when a statutory authority develops land or allots a site or constructs a house for the benefit of common man it is as much service as by a builder or contractor. The one is contractual service and other statutory service. If the service is defective or it is not what was represented then it would be unfair trade practice as defined in the Act. Any defect in construction activity would be denial of comfort and service to a consumer. When possession of property is not delivered within stipulated period the delay so caused is denial of service. Such disputes or claims are not in respect of immoveable property as argued but deficiency in rendering of service of particular standard, quality or grade. Such deficiencies or omissions are defined in sub-clause (ii) of clause (r) of Section 2 as unfair trade practice.....A development authority while developing the land or framing a scheme for housing discharges statutory duty the purpose and

objective of which is service to the citizens. As pointed out earlier the entire purpose of widening the definitions is to include in it not only day to day buying of goods by a common man but even such activities which are otherwise not commercial but professional or service-oriented in nature. The provisions in the Acts, namely, Lucknow Development Act, Delhi Development Act or Bangalore Development Act clearly provide for preparing plan, development of land, and framing of scheme etc. Therefore if such authority undertakes to construct building or allot houses or building sites to citizens of the State either as amenity or as benefit then it amounts to rendering of service and will be covered in the expression 'service made available to potential users'. A person who applies for allotment of a building site or for a flat constructed by the development authority or enters into an agreement with a builder or a contractor is a potential user and nature of transaction is covered in the expression 'service of any description'. It further indicates that the definition is not exhaustive. The inclusive clause succeeded in widening its scope but not exhausting the services which could be covered in earlier part. So any service except when it is free of charge or under a constraint of personal service is included in it. Since housing activity is a service it was covered in the clause as it stood before 1993."

(emphasis supplied)

25. The judgment in **M.K. Gupta's** case was relied upon in **Ghaziabad Development Authority v. Balbir Singh** (2004) 5 SCC 65 and it was held that the Act has a wide reach and the Commission has jurisdiction even in cases of service rendered by statutory and public authorities. The Court observed that where there has been capricious or arbitrary or negligent exercise or non-exercise of power by an officer of the authority, the Commission/Forum has a statutory obligation to award compensation.

26. We shall now consider whether the members of the Societies were consumer of the service rendered by the Chandigarh Administration and the Board in the matter of allotment of land to the Societies under the 1991 Scheme and the complaints filed by them were maintainable.

27. A cursory reading of the 1991 Scheme may give an impression that the sole object thereof was to allot land to the Societies through the agency of the Board for construction of multistoried structures and the Chandigarh Administration and the Board had nothing to do with the members of the Societies, but a careful reading of various clauses of the Scheme and the directives given by the Finance Secretary from time to time leave little room for doubt that the members of the Societies were the real and ultimate beneficiaries. This is evident from the following:

(i) Clause 4 of the Scheme envisaged allotment of land by the Chandigarh Administration to the Board on chunk basis for its further allotment to the eligible Societies so as to enable them to construct multistoried structures/dwelling units for their members. The Societies and their members were made jointly and severally responsible for payment of premium including installments and ground rent. By clause 4, a duty was cast upon the Societies and their members to comply with the provisions of the Capital of Punjab

(Development and Regulation) Act, 1952 and the rules and regulations framed thereunder. Clause 6 of the Scheme enumerated the conditions of eligibility and entitlement of the members for allotment of dwelling units of different categories. Clause 8 provided for refund of earnest money to a Society, if it were to cancel the demand before allotment of land. In terms of clause 9, every member of the Society was required to pay the amount to the Society by means of crossed demand draft and the latter was to deposit the same in its account maintained in the Chandigarh State Co-operative Bank Limited. Clause 10 provided for construction of dwelling units by the Societies within three years from the date of allotment. By clause 11, the provisions of the 1973 Rules were made applicable to the land allotted under the 1991 Scheme.

(ii) In view of the interim order passed by the High Court in Writ Petition No.1454/1992, the Board accepted 10% earnest money and then called upon the Societies to give the particulars of their members and the amount deposited by them.

(iii) Vide memo dated 9.6.1993, the Finance Secretary directed that in case the members of the Societies seek refund of the earnest money, then 10% of 25% amount deposited by them shall be deducted.

(iv) After dismissal of the writ petition by the High Court with an observation that the Societies who had deposited 10% of the sale consideration and found eligible for allotment, would be liable to pay balance 15% with a further interest at the rate of 18% per annum, the Finance Secretary issued memo dated 6.11.1997 and asked the Board to accept the balance 15% earnest money with 18% interest.

(v) When the members of the Societies demanded refund of the amount paid by them by indicating that they were no longer interested in the flats, the Board requested the Finance Secretary to give guidance in the matter. The latter constituted a committee of three officers and on receipt of the recommendations of the committee, he issued memo dated 9.3.2000 for refund of earnest money to the Societies and their members without forfeiting 10% of the earnest money but, at the same time, he directed that interest paid pursuant to the High Court's judgment be not refunded because the same did not form part of the earnest money.

28. From what we have noted above, it is crystal clear that even though the 1991 Scheme was ostensibly framed for allotment of land to the Societies for construction of multistoried structures (dwelling units/flats) for their members, but the provisions contained therein not only regulated the

relationship of the Societies with their members, but also made them jointly and severally responsible for payment of the earnest money etc. The Finance Secretary and the Board issued directions from time to time for payment of the earnest money and interest by the members of the Societies. If the scheme had nothing to do with the members of the Societies, then it would not have contained provisions to regulate their eligibility and entitlement to get dwelling units to be constructed on the land allotted by the Board and made them jointly and severally responsible for payment of the premium etc. and the Finance Secretary would not have issued directions vide memos dated 9.6.1993 and 9.3.2000 in the matter of refund of earnest money and interest. The Board too would not have entertained the request made by the members of the Societies for refund of the earnest money and remitted the amount to the Societies after deducting 10%. Thus, even though no formal contract had been entered into between the Chandigarh Administration and the Board on the one hand and the members of the Societies on the other hand, the former exercised sufficient degree of control over the latter. By making applications for allotment of land, the Societies will be deemed to have hired or availed the services of the Chandigarh Administration and the Board in relation to housing construction as elucidated and explained in **M.K. Gupta's case** and **Balbir Singh's case**. If the scheme had been faithfully implemented and land had been allotted to the Societies, their members would have been the actual and real

beneficiaries. Therefore, they were certainly covered by the definition of 'consumer' under Section 2(d)(ii), the second part of which includes any beneficiary of the services hired or availed for consideration which has been paid or promised or partly paid and partly promised. As a sequel to this, it must be held that the members of the Societies had every right to complain against illegal, arbitrary and unjustified forfeiture of 10% earnest money and non-refund of 18% interest and the District Consumer Forum did not commit any jurisdictional error by entertaining the complaints.

29. The argument of Mrs. Rachana Joshi Issar that the Board had deducted 10% earnest money and declined to refund 18% interest to the members of the Societies strictly in accordance with the directives given by the Finance Secretary and in the absence of challenge to memos dated 9.6.1993 and 9.3.2000, the complainants were not entitled to any relief is meritless and deserves to be rejected. At the cost of repetition, we may observe that in terms of clause 8 of the 1991 Scheme, a Society would have become entitled to refund of the earnest money without any deduction if it were to cancel the demand before allotment of land. This is also the spirit of Rule 8 of the 1973 Rules which were made applicable to the land allotted under the scheme. That rule reads as under:

“8. Lease by allotment, Procedure for.— (1) In case of allotment of site or building the intending lessee shall make an application to the Estate Officer in Form ‘A’.

(2) No application under sub-rule (1) shall be valid unless it is accompanied by 10 per cent of the premium as earnest money in the prescribed mode of payment.

(3) When 10 per cent of the premium has been so tendered the Estate Officer shall, subject to such directions as may be issued by the Chief Administrator in this behalf, allot a site of the size applied for or a building of which particulars are given in the application and shall intimate, by registered post the number, sector, approximate area, premium and the rent of the site or building allotted to the applicant.

(4) The applicant shall, unless he refuses to accept the allotment within 30 days of the date of the receipt of the allotment order, deposit within that period and in the prescribed mode of payment, further 15 per cent of the premium. The remaining 75 per cent of the per cent of the premium shall be paid as provided in rule 12.

(5) If the applicant refuses to accept the allotment within said period of 30 days, he will be entitled to the refund of the amount paid by him. The refusal shall be communicated to the Estate Officer by a registered letter (acknowledgement due). The refund shall be made by means of a cheque payable at the State Bank of India at Chandigarh and the applicant shall bear the collection charges for the same.

(6) If the applicant fails to communicate his refusal to accept the allotment within 30 days and also fails to deposit 15 per cent of the premium under sub-rule (4) the Estate Officer may forfeit the whole or part of the earnest money.”

30. An analysis of the above reproduced rule would show that an application for allotment of site or building by way of lease can be entertained only if it is accompanied by 10% of the premium as earnest money. The allottee is required to deposit 15% of the premium within 30

days of allotment. The balance amount is to be paid in accordance with Rule 12. An applicant who refuses to accept allotment within 30 days is entitled to refund of the amount paid by him. If the applicant neither refuses to accept the allotment nor deposits 15% of the premium, the Estate Officer can forfeit the whole or part of the earnest money. The provision relating to refund of the premium/earnest money or forfeiture of the whole or part thereof gets attracted only after the allotment is made and not before that.

If para V(i) of memo dated 9.6.1993 issued by the Finance Secretary is examined in the light of the plain language of Rule 8 of the 1973 Rules and clause 8 of the 1991 Scheme, it becomes clear that the concerned officer had exceeded his brief when he directed that 10% of 25% of the premium/earnest money should be deducted if the members seek refund of the earnest money on any ground whatsoever. By giving this directive, the concerned officer indulged in arm twisting and attempted to teach a lesson to the members of the Societies who had filed writ petition and succeeded in persuading the High Court to restrict payment of the earnest money to 10%. However, he must have realized the folly committed by issuing a direction in complete disregard of the spirit of Rule 8(5) of the 1973 Rules and clause 8 of the 1991 Scheme and this must have been the reason why he made amends by incorporating clause 7 in memo dated 9.3.2000 for full refund of the earnest money without forfeiting 10%. Unfortunately, it proved to be a

half hearted attempt by the Finance Secretary to redeem the wrong done earlier because while directing refund of the earnest money without any deduction, he used the expression 'will henceforth' in clause 7, which gave leverage to the Board to decline the request of the members of the Societies for full refund of the earnest money on the ground that 15% had already been remitted to the Societies for being paid to their members before the issue of memo dated 9.3.2000. In our view, once the Finance Secretary took the corrective step, which was in consonance with the spirit of Rule 8(5) of the 1973 Rules and clause 8 of the 1991 Scheme, the Board should have refunded the balance 10% amount to all the members who had applied for refund on finding that land had not been allotted to the Societies and they may have to wait for indefinite period to get the flats.

31. It is also worth noticing that on receipt of the applications made by the members of the Societies for refund of the earnest money and interest, the Secretary of the Board had written letter dated 11.12.1998 to the Finance Secretary seeking his guidance in the matter. However, before the latter could take a decision, the Chief Accounts Officer of the Board remitted the amount of earnest money to the Societies after deducting 10% with a direction that the same be paid to their members. The Board has not explained why its officers did not wait for the decision of the Finance

Secretary and why the Chief Accounts Officer exhibited undue haste in remitting the amount of earnest money to the Societies after deducting 10%. In any case, after the Finance Secretary decided that earnest money will be refunded to the Societies and their members without any deduction, the Board should have refunded forfeited portion of the earnest money to the members of the Societies and its failure to do so certainly amounted to deficiency in service.

32. The issue which remains to be examined is whether the Chandigarh Administration and the Board were justified in refusing to refund 18% interest paid by the members of the Societies in view of the observations made by the High Court. The consideration of this issue needs to be prefaced with a comment that the 1952 Act and the 1973 Rules do not provide for levy of 18% interest on the delayed payment of earnest money or a portion thereof. The 1991 Scheme also did not provide for levy of such interest. Notwithstanding this, the members of the Societies had to pay 18% interest because while dismissing the writ petition, the High Court observed that the Societies who had deposited 10% of the sale consideration and found eligible for allotment or have been allotted sites would be liable to pay the balance 15% with a further interest at the rate of 18% per annum. However, there was nothing either in the interim or the final order of the

High Court from which it can be inferred that the Chandigarh Administration or for that reason the Board was authorised or empowered to refuse refund of 18% interest to the members who did not seek allotment of flat. If the final order passed by the High Court is read in conjunction with interim order dated 11.5.1992, it becomes clear that the Societies were to deposit the remaining amount with interest at the rate of 18% per annum only if they were to accept allotment of flats under the Scheme. Although, the writ petitions were filed by the Societies, the language of the interim order passed by the High Court shows that the learned Judges were thinking of imposing liability of 18% interest only on those members who were to accept allotment of flats to be constructed by the Societies. The members of the Societies did not get an opportunity to accept the allotment because even after deposit of full earnest money and 18% interest, the Board did not allot land to the Societies on which they could construct dwelling units/flats. The Finance Secretary misinterpreted the orders of the High Court and issued wholly arbitrary and unjust directive to the Board not to refund 18% interest to the members of the Societies who had applied for refund before allotment of land by the Board. In our view, the Chandigarh Administration and the Board had no right to refuse refund of 18% interest and absence of direct challenge to clause 11 of memo dated 9.3.2000 was not sufficient to legitimize indirect forfeiture of that amount and the State Commission did not commit any error by directing refund of the amount of interest by

treating it to be a case of deficiency in service and the National Commission rightly declined to interfere with the order of the State Commission.

33. In the result, the appeals are dismissed. The Board is directed to refund the amount due to the complainants within a period of three months from the date of receipt/production of copy of this judgment. Within that period, the Board shall also pay litigation cost of Rs.25,000/- to each of the complainants.

.....J.
[G.S. Singhvi]

.....J.

New Delhi
September 22, 2010.

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[Asok Kumar Ganguly]