

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

NEW DELHI

CONSUMER COMPLAINT NO. NC/CC/238/2019

PUSHPA JAGANNATH SHETTY & 2 ORS.

MR. AMALRAJ JAGANNATH SHETTY

PRESENT ADDRESS - POSTAL ADDRESS: RUKMINI VAIBHAV CO-OP. HOUSING SOCIETY LTD., FLAT NO. C-204, ANDHERI*WEST), MUMBAI-400058, MAHARASHTRA

MRS. ATITA JAGANNATH SHETTY

PRESENT ADDRESS - RUKIMINI

.....Complainant(s)

Versus

SAHAJ ANKUR REALTORS & 4 ORS.

PRESENT ADDRESS - Postal Address: 404 Niranjan, 49 Marine Drive, Marine lines (west), Mumbai-400002, Maharashtra,

IB. MR. SUNIL SHAH (PARTNER)

PRESENT ADDRESS - Postal Address: 404 Niranjan, 49 Marine Drive, Marine lines (west), MUMBAI-400002, MAHARASHTRA,

IC. MR. SHAILESH HINGARH (PARTNER)

PRESENT ADDRESS - Postal Address: 404 Niranjan, 49 Marine Drive, Marine lines (west), MUMBAI-400002, MAHARASHTRA,

ID. JIGISH H. PARIKH

PRESENT ADDRESS - Postal Address: 404 Niranjan, 49 Marine Drive, Marine lines (west), MUMBAI-400002, MUMBAI-

1E. PARAG H. PARIKH

PRESENT ADDRESS - Postal Address: 404 Niranjan, 49 Marine Drive, Marine lines (west), MUMBAI-400002, MAHARASHTRA,

.....Opposite Party(s)

BEFORE:

HON'BLE MR. JUSTICE SUDIP AHLUWALIA, PRESIDING MEMBER

HON'BLE DR. SADHNA SHANKER, MEMBER

FOR THE COMPLAINANT:

MR. ASIT SHARMA & MR. ADITYA VIKRAM SINGH ADVOCATES WITH
COMPLAINANT IN –PERSON.

FOR THE OPPOSITE PARTY:

MR. VIGNESH RAJ, ADVOCATE FOR OP-1 MR. SAMARTH CHOWDHARY AND
MS. PRACHETA KAR, ADVOCATES FOR OP-2 & 3.

DATED: 27/01/2026

ORDER

JUSTICE SUDIP AHLUWALIA, MEMBER

This Consumer Complaint has been filed under Section 21 of the Consumer Protection Act, 1986,

seeking possession of the Flats or in the alternative the market value of the Flats along with other ancillary reliefs.

2. The factual background, in brief, is that the Complainants entered into a registered Agreement for Permanent Alternative Accommodation dated 20.09.2013 with Opposite Party No.1, Sahaj Ankur Realtors, in respect of their tenanted Flats Nos. 3 and 4 in Building A, Madhav Baug, Andheri (East), Mumbai. Under the said Agreement, the Opposite Party, claiming ownership of the property by virtue of a Deed of Slump Sale of Business dated 16.11.2011, undertook redevelopment of the property and committed to allot the Complainants, on ownership basis, Flat No. 801 admeasuring 700 sq. ft. carpet area in B Wing along with podium parking, within 24 months from issuance of the Commencement Certificate with a grace period of six months. Out of the said area, 650 sq. ft. was free of cost, while 50 sq. ft. was to be purchased by the Complainants at Rs. 22,800/- per sq. ft., aggregating to Rs. 11,40,000/-. The Opposite Party also acknowledged receipt of Rs. 6,00,000/- paid by the Complainants as further consideration. The Agreement further obligated the Opposite Party to earmark the Flat and parking on sanctioned plans, furnish an unconditional performance Bank Guarantee of Rs. 2.00 crores, pay compensation of Rs. 5,00,000/- for dislocation, and pay monthly transit rent of Rs. 25,000/- with escalation clauses, along with brokerage and shifting charges, which obligations were admittedly not fully complied with.

3. The Complainants allege that due to delay in commencement and completion of the project and failure to obtain approvals, the Opposite Party executed a Deed of Indemnity-cum-Undertaking dated 10.01.2015, pursuant to which the Complainants handed over vacant possession of their premises on 12.01.2015. Under the said Deed, the Opposite Party undertook to obtain approval for Flat No. 801 within six months (time being of the essence), failing which it agreed to allot two alternative Flats bearing Nos. 301 and 302 admeasuring 650 sq. ft. and 667 sq. ft. carpet area respectively in B Wing, free of cost, which allotment letters were placed in escrow with a Solicitor. It was further agreed that if neither the agreed Flat nor the escrow Flats could be provided, the Opposite Party would pay the Complainants the market value for 1317 sq. ft. carpet area plus 25% compensation, and that payment for the additional 50 sq. ft. would remain suspended till approved plans were furnished.

4. It is the case of the Complainants that although certain payments towards rent, brokerage and part compensation were made in December 2014, the balance compensation of Rs. 2,50,000/- remained unpaid. They further alleged that pursuant to a Joint Venture Agreement dated 29.04.2014 between the Opposite Party No.1 and the Opposite Party No.2, development was taken up in the name of the Opposite Party No.3, and thereafter the Opposite Parties stopped paying transit rent, raised illegal demands for payment towards the additional 50 sq. ft., and failed to provide approved plans. Despite Legal Notices and repeated correspondence through Solicitors and the Escrow Agent between July 2018 and December 2018, the Opposite Parties failed to comply, resulting in release of escrow documents to the Complainants on 17.12.2018. The Complainants further alleged that the Opposite Parties changed building plans without consent and fraudulently showed Flat No. 801 as a refuge area in the approved plan furnished in October 2018. Aggrieved with the same, the present Complaint was filed with the following prayers –

“a) That this Hon’ble Court, direct and order the Opposite Parties to allot Flat Nos. 301 & 302 on the third-floor admeasuring of 650 and 667 square feet carpet area, along with Podium Car Parking, respectively in the “B” Wing of the proposed new buildings with A Wing, B wing and C. Wing to be developed on the property currently known as “Madhav Baug” bearing C.T.S. Nos. 657 and 657/1 to 19 of Village Andheri, Taluka Andheri situated at Andheri Kurla Road, Andheri (East), Mumbai 400 069, and have the Agreements in respect of the same, Registered with the Sub-

Registrar of Assurances, Mumbai, in the name of the Complainants; AND/OR in the Alternative,

b) This Hon'ble Court direct and order the Opposite Parties to pay to the Complainants, a Sum of Rs. 4,59,96,225/- (Rupees Four Crores Fifty-Nine Lakhs Ninety -Six Thousand Two Hundred Twenty-Five only) as market value and 25% compensation for the Flats and further interest thereon at the rate of 12% Per annum till payment or realization from the date of filing of this Complaint.

c) That this Hon'ble Court, Direct and Order the Opposite Parties to be restrained by an order and direction of this Hon'ble Court not to create any third-Party rights or encumber two flats Nos. 301 and 302 respectively on the third-floor admeasuring of 650 and 667 square feet carpet area, respectively in the "B" Wing of the proposed new buildings with A Wing, B wing and C Wing to be developed of the property on the currently known as "Madhav Baug" bearing C.T.S. Nos. 657 and 657/1 to 19 of Village Andheri, Taluka Andheri situated at Andheri Kurla Road, Andheri (East), Mumbai-400 069.

d) That this Hon'ble Court, direct and order the Opposite Parties to pay the Complainant rent from January 2019 onwards at the rate of 51,537/- per month till the final disposal and hearing of this Complaint.

e) That this Hon'ble Court, direct and order the Opposite Parties to pay the arrears of Rupees 2,50,000/- which was due on 29th October 2017 along with interest at rate of 12% per annum to the Complainant.

f) That this Hon'ble Court, direct and order the Opposite Parties to pay an amount Rupees Two Lakhs towards the cost of this Complaint."

5. The Opposite Party No. 1 has filed its Written Statement and resisted the Complaint. It has denied all the material averments made by the Complainant. The Opposite Party No. 1 has averred that the Complainants are not "Consumers" under the Consumer Protection Act in the facts of the case, and that the dispute essentially pertains to landlord-tenant issues and grant of permanent alternate accommodation, with only a minor component relating to purchase of 50 Sq. Ft., and therefore does not fall within the Act. It is further contended that Sahaj Ankur Realtors is a partnership Firm (through its Partners), that Ankur May Flower Associates is a Joint Venture of Sahaj Ankur Realtors and Vinca Realtors Pvt. Ltd., and that there is no privity of Contract with Associates and Mr. Shailesh Hingarh, who are asserted to be unnecessary parties but have been impleaded only as a pressure tactic; That Vinca Realtors had joined subsequently, obtained the Commencement Certificate on 08.04.2015, and made compensation payments on behalf of the association which the Complainants had accepted. The alleged "escrow" documents are denied as enforceable, it being asserted that there was no escrow Agreement and the documents were merely deposited in trust with Mahesh Jani & Co. It is also stated that the Flat Nos. 301 and 302 were agreed to be sold by registered Agreement dated 17.10.2017 to a third party, Shri Sharvin P. Bhatt; That amendments to plans were granted up to July 2018, and the Commencement Certificate in respect of Flat No. 801 was issued on 30.08.2018 and any discrepancy in the approved plan showing "802" is stated to be capable of rectification. The meetings between the parties and Mr. Mahesh Jani in April-June 2018 indicated that approval for Flat No. 801 was likely shortly, yet the Complainants issued the letter dated 09.07.2018 making exorbitant claims and threats, and thereafter pressured Mr. Mahesh Jani to hand over the documents. It is asserted that there is no documentary proof of lawful handover of such documents to the Complainants as

alleged.

6. The Opposite Party No. 1 has further averred in its Written Statement that the principal relief for Flat Nos. 301 and 302 being founded on the purported "escrow"/undertaking/allotment letters is unsustainable, and consequently the alternative compensation claim of Rs. 4,59,96,225/- does not arise. Flat No. 801 remains reserved for the Complainants and is nearing completion, with expected delivery within one year as per RERA registration, and therefore interim/other reliefs are not warranted; That compensation/rent was paid up to at least December 2018 (and rent up to March 2019 at Rs. 35,000/- per month), making the claim of Rs. 51,537/- per month illogical and the balance corpus of Rs. 2,50,000/- is stated to be payable only at the time of possession. The allegations of deficiency, plan changes, and showing the 8th Floor as refuge area are denied. It is asserted that the 8th Floor is a partly refuge and partly regular area, and the Complainants have suppressed this fact.

7. The Opposite Party Nos. 2 and 3 have also filed their Written Statement and resisted the Complaint. They have denied all the material averments made by the Complainant. They have averred that the pecuniary jurisdiction of this Commission has been invoked by artificially inflating the claim to Rs. 4,65,34,483/- on the basis of a Deed of Indemnity-cum-Undertaking dated 10.01.2015 and an undated Letter of Allotment, executed exclusively between the Complainants and Sahaj Ankur Realtors. It is pleaded that the Indemnity Documents constitute a separate Contract outside the ambit of the Consumer Protection Act, 1986, that the Complainants are not "Consumers" for reliefs sought thereunder, and that the dispute, seeking specific performance of an alleged security instrument (Flats 301/302) or money in lieu thereof ought to be relegated to a Civil Court; That the Complainants have resorted to Forum shopping and have deliberately framed reliefs under the Indemnity Documents to meet the pecuniary threshold, although valuation under the parent Permanent Alternate Accommodation Agreement dated 20.09.2013 would be substantially lower; That the Complaint deserves to be dismissed for misjoinder as the Opposite Party No. 2 and 3 are not signatories to either the Accommodation Agreement dated 20.09.2013 or the Indemnity Documents and have no privity of Contract with the Complainants. Their relationship is only with Sahaj under a Joint Venture Agreement dated 29.04.2014 forming Opposite Party No. 3 for redevelopment of CTS Nos. 657 and 657/1-19 ("Evergreen Woods"). Reliance is placed on the JV clauses indicating Sahaj's sole responsibility to keep tenant accommodation Agreements valid and to settle pre-JV claims. It is contended that the Complainants have not sought any relief regarding Flat No. 801 (700 sq. ft. carpet with podium parking) reserved for them under the Accommodation Agreement, but instead seek the Flats 301/302 or compensation, rendering the Complaint premature since Flat No. 801 is stated to be nearing completion and expected within one year as per MahaRERA particulars.

8. The Opposite Party Nos. 2 and 3 have further averred in their Written Statement that in fact, the Complainants were tenants of Flat No. 3 admeasuring 240 sq. ft. and redevelopment was delayed due to fluctuating Development Control Regulations and subsequent amendments requiring repeated plan modifications; That MahaRERA registration for the project was granted on 18.08.2017 and that amendments were obtained up to the 8th Floor (B wing) and 10th Floor (C Wing) by 2018. A Legal Notice dated 09.07.2018 demanded arrears and approvals and revealed the Indemnity Documents allegedly executed by Sahaj without their knowledge/consent, followed by notices from Mahesh Jani & Co. to hand over the alleged "escrow" documents; That the approved/proposed plans were shared with the Complainants by emails dated 19.05.2018 and 17.10.2018, and that on 17.12.2018 the documents were handed over in a meeting which Mr. Sunil Shah and Mr. Shailesh Hingarh attended only as witnesses. That the Flats 301 and 302 were sold to a third party, Mr. Sharvin P. Bhatt, by a registered Agreement dated 17.10.2017. Hence the primary relief cannot be granted. It is also pleaded that after filing of the Complaint,

further floor plans/emails were exchanged on 23.07.2019 and 26.07.2019 regarding the reserved Flat No. 801, which the Complainants allegedly suppressed even in the amended Complaint filed pursuant to Orders dated 01.08.2019 and 11.11.2019 (amended filing on 24.01.2020).

9. Rejoinder on behalf of the Complainant to the Written Statement by the Opposite Party No. 1 has been filed; It has been averred in the Rejoinder that the Opposite Party No.1 had failed to commence/complete the project within the stipulated period, had begun work only in January 2015, and took vacant possession around 10.01.2015. In view of non-furnishing of approvals for B-801, the Opposite Party No. 1 assured that there would be no plan change and approvals would be provided within six months, and had accordingly executed a Deed of Indemnity-cum-Undertaking dated 10.01.2015. Under the said Deed, the Opposite Party No.1 had agreed to obtain approval of B-801 within six months (time being of the essence), failing which it would allot Flat Nos. 301 and 302 in B Wing admeasuring 650 sq. ft. and 667 sq. ft. carpet area respectively at no additional cost, with the allotment letters kept in escrow with Mr. Mahesh Jani to be released upon default after seven days' notice, and in the event of inability to provide B-801 and/or the alternate Flats, it would pay for 1317 sq. ft. carpet area at market value plus 25%, while the payment schedule for the additional 50 sq. ft. would remain suspended until the approved plans for B-801 were furnished. The Complainants allege that after handover of possession, the project remained stalled for substantial periods, multiple plans were circulated/changed without consent, and the Opposite Parties attempted to coerce the Complainants into shifting to other Flats or paying large additional sums. It is asserted that rent was stopped/blocked contrary to the Agreement and escalation/increment Clauses, and that B-801 was shown as a refuge area in the plan furnished by email dated 18.10.2018. The Complainants further plead non-payment of rent arrears/shortfall, non-payment of Rs. 2,50,000/- towards dislocation/corpus, and unlawful demands for payment towards the 50 sq. ft. despite suspension under the Deed.

10. It has been further averred in the Rejoinder to the Opposite Party No.1's Written Statement that from January 2017 the rent was stopped even without escalation, and the Opposite Party No. 2 and 3 were introduced as Developers, with dealings thereafter forced through Mr. Shailesh Hingarh, despite the Agreement stating that the Opposite Party No.1 would not create any third-party entity. The Complainants describe partial/deficit rent payments, coercion and threats, and subsequent blocking of rent from April 2018, including allegations that the Opposite Party No.1 became unreachable and a news report dated 24.01.2018 (Times of India) is relied upon stating that the EOW had registered a case against Opposite Party No.1. WhatsApp chats with Mr. Nimesh Dalal are relied upon, along with meetings in May 2018 and subsequent threats to clear payment for 50 sq. ft., which led to issuance of a Legal Notice and pursuit of the escrow documents; That several meetings had been held at the escrow Agent's office where the Opposite Parties' representatives had assured that the approved plans would be provided, but failed to do so, and ultimately the escrow documents were handed over on 17.12.2018 in presence of the Opposite Party. On the Opposite Parties' own case that Flats Nos. 301 and 302 were sold, the Complainants contend this constitutes a breach of the escrow arrangement, and consequently Opposite Parties are jointly and severally liable to pay for 1317 sq. ft. at market value plus 25% as per the Deed.

11. Rejoinder on behalf of the Complainants to the Written Statement by the Opposite Party No. 2 and 3 has been filed. The Complainants have denied all the material averments of these Opposite Parties and reiterated their own averments.

12. Evidence by way of Affidavit has been filed on behalf of the Complainants - Complainant No. 1, Mrs. Pushpa Jagannath Shetty; and by Complainant No. 3, Ms. Atita Jagannath Shetty; Evidence by way of Affidavit has been filed on behalf of the Opposite Party No. 2 and 3 by Shailesh Hingarh, Authorized Signatory of M/s. Vinca Realtors Pvt. Ltd. and M/s. Ankur Mayflower

Associates.

13. Heard Ld. Counsel for Complainants and the Opposite Parties, and perused the material available on record.

14. Ld. Counsel for the Complainants has argued that the Developer had delayed approvals and commencement, started work only in January 2015, and the Complainants had handed over vacant possession on 10.01.2015. The delay is stated to be admitted in the Deed of Indemnity-cum-Undertaking dated 10.01.2015. Under the said Indemnity, approval for Flat 801 was to be obtained within six months (by 10.07.2015), failing which the Complainants were to be allotted Flat Nos. 301 and 302 (650 and 667 sq. ft.) in B Wing, 3rd Floor at no additional cost, with allotment letters kept in custody of the escrow Agent- Mr. Mahesh Jani and releasable upon default after seven days' notice, and if neither Flat 801 nor the escrow Flats were provided, the Developer was to pay for 1317 sq. ft. at market value plus 25%, while payment for the additional 50 sq. ft. would remain suspended until the approvals were furnished. The Complainants rely upon admissions/record to contend that approvals were not obtained within the stipulated period, including the pleadings/evidence of Opposite Party Nos. 2 and 3 that approvals were not taken till 19.05.2018, and the correspondence issued by the escrow Agent in September and December 2018; That approved plans for Flat 801 were not timely provided, and when shown in 2018, the Flat 801 was depicted as a "refuge area", multiple inconsistent plans were produced and approval particulars withheld, and that the escrow Flats (301 and 302) were sold to a third party (Sharvin Bhatt) by a registered Agreement dated 17.10.2017 despite Clause 5 of the Indemnity restricting third-party creation, and despite the fact that approval for Flat 801 was still pending. It is further asserted that rent and escalation Clauses were breached, substantial arrears remain outstanding (stated principal outstanding of Rs. 78,83,717/- without interest), the second tranche of corpus of Rs. 2,50,000/- remains unpaid, and rental payments were delayed and ultimately stopped post March 2020, with coercive conduct and attempts to force alternate arrangements are also alleged. The Complainants rely upon the Hon'ble Supreme Court's Order dated 28.02.2025 in "Pushpa Jagannath Shetty v. Sahaj Ankur Realtors, (2025) 7 SCC 168" holding the Complaint within limitation and remanding the matter for fresh adjudication. On merits, they maintain their reliefs for allotment of Flats 301 and 302 with parking in terms of the Indemnity or, in view of admitted sale of the escrow flats, compensation for 1317 sq. ft. at market value plus 25% with interest @ 12% p.a., along with directions for payment of accrued arrears (rent/escalated rent, brokerage, balance corpus and allied amounts), costs, and such other reliefs as deemed fit.

15. Ld. Counsel for Opposite Party No. 1 has argued that the Complainants had failed to pay Rs. 51,000/- due at the time of execution of the Permanent Alternate Accommodation Agreement (PAAA) dated 20.09.2013, had falsely alleged that the allotted Flat was in a refuge area despite its area being 737 sq. ft., had acted in concert with the alleged escrow Agent to enforce an unregistered document, and suppressed the fact that a sum of Rs. 23,45,000/- has already been paid to them under the PAAA, liable to adjustment; That the Complaint is not maintainable as the Complainants are not "Consumers" within the meaning of the Consumer Protection Act, 1986, since no relief is claimed for deficiency or delay in construction of the allotted Flat under the PAAA. It is further contended that the Deed of Indemnity dated 10.01.2015 is unenforceable as it purports to create rights in immovable property by allotment of alternative Flats and, therefore, requires mandatory registration under Sections 17 and 49 of the Registration Act, 1908. Being unregistered, the said document neither affects immovable property nor is admissible in evidence. Reliance is placed on the decision of the Hon'ble Supreme Court in "Shyam Narayan Prasad v. Krishna Prasad & Ors., (2018) 7 SCC 646", holding that unregistered instruments creating rights in immovable property are inadmissible. It is further argued that even assuming the Deed of Indemnity to be enforceable, the Complainants have failed to prove any loss as required under

Section 124 of the Contract Act, 1872, and therefore cannot claim indemnification. In any event, the amounts already paid under the PAAA must be adjusted. With respect to rent and allied claims, it is submitted that the Complainants have not sought possession or ownership of Flat B-801 under the PAAA but have chosen to pursue their claims under the Deed of Indemnity. The allotted Flat was completed by 30.06.2021, the Occupancy Certificate was obtained on 15.08.2021, and the Complainants inspected the Flat on 23.10.2021, yet refused to take possession. Having declined possession of a completed Flat, the Complainants are not entitled to arrears of rent, escalated rent, brokerage or other charges. In view of these arguments, the Opposite Party No.1 prays that the Complaint be dismissed as being devoid of merit and not maintainable in law.

16. Ld. Counsel for Opposite Party Nos. 2 and 3 has argued that the Complaint seeks enforcement of the Permanent Alternate Accommodation Agreement dated 20.09.2013 and/or the Deed of Indemnity dated 10.01.2015. At the outset, it is submitted that the Complaint is not maintainable against the Opposite Party Nos. 2 and 3 as there is no privity of Contract between them and the Complainants in respect of either the PAAA or the Deed of Indemnity, both of which were executed exclusively between the Complainants and Opposite Party No. 1. It is further argued that the Complaint does not disclose any specific allegation or factual foundation to fasten liability upon the Opposite Party No. 2 and 3, who neither provide any service to the Complainants nor owe them any contractual obligation. The Opposite Party No. 2's relationship is only with Opposite Party No. 1 under a Joint Venture Agreement dated 14.04.2014, pursuant to which Opposite Party No. 3 was constituted. Under the said JV, the Opposite Party No. 2 was merely responsible for introducing working capital, which was to be utilised by the Opposite Party No. 1 towards payments to Tenants under Agreements executed by the Opposite Party No. 1. It is specifically provided under the JV that all liabilities and claims prior to its execution, including those arising from the PAAA dated 20.09.2013, are the sole responsibility of the Opposite Party No. 1, who is obliged to settle such claims at its own cost. There is similarly no privity between the Complainants and the Opposite Party No. 2 and 3 with respect to the Deed of Indemnity, which was executed only by Opposite Party No. 1. In these circumstances, it is submitted that the Opposite Party No. 2 and 3 are improper and unnecessary parties, and the dispute, if any, arises solely from documents executed between the Complainants and Opposite Party No. 1, warranting dismissal of the Complaint qua the Opposite Party No. 2 and 3.

17. At the outset, the objection as to maintainability under the Consumer Protection Act, 1986 deserves rejection. The Permanent Alternate Accommodation Agreement dated 20.09.2013 and the subsequent Deed of Indemnity-cum-Undertaking dated 10.01.2015 emanates from and are intrinsically connected with the redevelopment service undertaken by Opposite Party No. 1. The Complainants, having surrendered their tenanted premises and paid consideration for the additional 50 sq. ft., clearly fall within the definition of "Consumer", and the obligations assumed by the Developer are squarely amenable to scrutiny under the Act.

18. It is not in dispute that under the Agreement dated 20.09.2013, the Opposite Party No. 1 had undertaken to allot Flat No. 801 within 24 months from the issuance of the Commencement Certificate, with a further grace period of six months. Equally undisputed is the fact that the project did not commence or progress in accordance with the stipulated timeline, compelling the execution of the Deed of Indemnity-cum-Undertaking dated 10.01.2015. The very execution of this Deed constitutes an admission of delay and non-compliance by the Opposite Party No. 1, and the obligations therein were expressly made time-bound, with time being of the essence.

19. Under the Deed of Indemnity-cum-Undertaking, the Opposite Party No. 1 had categorically undertaken to obtain approval for Flat No. 801 within six months, failing which it bound itself to allot alternative Flats bearing Nos. 301 and 302, and in the event of failure to provide either the

agreed Flat or the alternate Flats, to compensate the Complainants by payment of the market value for the agreed area. The material on record, including the pleadings and evidence of the Opposite Parties themselves, unmistakably demonstrate that approvals for Flat No. 801 were not obtained within the stipulated period and, in fact, remained uncertain even several years thereafter, with contradictory and inconsistent plans being furnished. The depiction of Flat No. 801 as a refuge area in the plans supplied in October 2018 further reinforces the Complainants' grievance that the contractual promise was never fulfilled.

20. Most significantly, it stands admitted by the Opposite Parties that the alternate Flats bearing Nos. 301 and 302, which formed the core security under the Indemnity-cum-Undertaking, were sold to a third party by a registered Agreement dated 17.10.2017. Such sale, effected during the subsistence of the indemnity arrangement and without the consent of the Complainants, constitutes a clear and fundamental breach of the undertaking given to the Complainants. Once the agreed Flat and the escrow Flats stood rendered unavailable by the acts of Opposite Party No. 1, the contractual consequence stipulated in the Deed necessarily follows, namely, payment of monetary compensation in lieu thereof.

21. The contention of Opposite Party No. 1 that the Deed of Indemnity-cum-Undertaking is unenforceable for want of registration is equally without merit in the facts of the present case. The relief now being sought for is not one of specific performance of allotment of immovable property, but compensation arising from an admitted breach and deficiency in service. The Deed is relied upon not to convey title, but to reveal the obligations undertaken and the agreed consequence of non-performance, which is permissible in law. Moreover, the deficiency in service flows independently from the admitted delay, failure to obtain approvals, and subsequent alienation of the promised alternate Flats.

22. In view of the admitted sale of the subject Flat under the indemnity arrangement to a third party and the prolonged, unexplained, and contractually acknowledged delay attributable to the Opposite Party No. 1, this Commission finds that directing delivery of possession at this belated stage would neither be just nor efficacious. The only appropriate, fair, and equitable relief is to award monetary compensation equivalent to the value of the Flat that the Complainants were entitled to receive in the year 2015-16. The circle rate for the year 2015-16 is the basis for computation and not the latest market value since as per records, the Complainants have themselves filed the Complaint almost 4 years after they were entitled to receive the Flat Nos. 301/302. Therefore they cannot unduly enrich themselves by seeking market value of the Flats in the subsequent years.

23. The Complainants have placed on record, by way of Affidavit dated 21.11.2025 (filed on 24.11.2025), wherein the applicable circle rate is seen to be Rs. 19,829/- per sq. ft. (for the year 2015-16), which has not been rebutted by the Opposite Parties. On the basis of the conversion from carpet area to built-up area, the total area works out to 1580.4 sq. ft. Applying the said circle rate, the total value payable to the Complainants comes to Rs. 3,13,37,751.60/-. This computation is found to be reasonable, supported by evidence, and in consonance with the contractual and statutory principles governing compensation for deficiency in service.

24. Accordingly, this Commission directs the Opposite Party No. 1 to pay to the Complainants a sum of Rs. 3,13,37,751.60/- being the circle rate value of the Flat for the year 2015-16 alongwith Rs. 78,34,437.90 (25% value of the Flats), thus, in total Rs. 3,91,72,189.50 with interest @ 6% p.a. from the date of filing of Complaint till the date of realization, together with litigation costs quantified at Rs. 50,000/- within 8 weeks from the date of this Order.

25. In the event of non-compliance within the directed period, any outstanding amount(s) shall be with interest @8% p.a. from the date of default till the date of realization.

26. The Complaint qua the Opposite Party Nos. 2 and 3 stands dismissed.

27. Pending application(s), if any, also stand disposed off as having been rendered infructuous.

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SUDIP AHLUWALIA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER