REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 1106 of 2009

B.B. Patel & Ors. .... Appellant (s)

Versus

DLF Universal Ltd. .... Respondent (s)

J U D G M E N T

L. NAGESWARA RAO, J.

1. This appeal has been filed against the judgment dated 19.01.2009 of the Monopolies and Restrictive Trade Practices Commission, New Delhi dismissing a complaint filed by the appellants under Sections 36-A, 36-B(a) and (d), 36-D and 36-E read with Sections 2(i) and 2(o) of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as “MRTP Act”).

2. An advertisement was issued by the respondent proposing attractive schemes of payment for the sale of group housing apartments/flats namely, “Beverly Park-I” at Qutab Enclave Complex in Gurgaon. According to one of the schemes, possession of the flats/apartments was to be handed over on payment of 40% of the cost of the flat within 2 ½ (two and half) years and the balance amount was to be paid within equated instalments over the next seven and half years. On 14.01.1993, the appellants applied for allotment of 4 apartments Nos. 404A, 404B, 406A and 406B in Tower No. 4, Windsor. By choosing the aforementioned option, the appellants sought to make payment for the apartments within a period of 10 years. According to the application form, possession was to be delivered to the appellants as “Licensees” for use and occupation on a monthly License Fee till the balance sale consideration was paid. Flats with super area of 270.35 sq. meter at the basic sale price of Rs.7,525/- per sq. meter were allotted to the appellants. Apart from the basic sale price, External

Development Charges (EDC) @ Rs.376/- per sq. meter, construction deposit of Rs.21.5 per sq. meter and lumpsum security of Rs.15,000/- were to be paid by the appellants for each flat.

3. The Apartment Buyer Agreement (hereinafter referred to as "ABA") was executed on 23.03.1993. The relevant clauses of the ABA are as under: -

> "2(b). The Apartment allottee shall additionally pay on demand to the Company his proportionate share of the cost for the provision of external electrification (including but not limited to installation of electric sub-station, meter box, electric stand-by generator) and all fire safety measures (including but not limited to fire fighting equipment and other accessories, materials and other items required for the installation and use of the aforesaid equipment.). In addition, if due to subsequent legislation/Govt. orders of directives or guidelines or if deemed necessary by the Company, any further fire safety measure are undertaken, the proportionate charges in respect thereof shall also be payable on demand by the Apartment allottee.

2(c). The Apartment Allottee shall pay a further sum of Rs._____ (Rupees _____only) as preferential location charges as per schedule of payments (Annexure II) annexed hereto. However, if due to change in the layout plan and consequent change in the allotment of the Apartment, it ceases to be so located or there is a change in the preferential location before or after the registration of sale deed, the Company shall be liable only to refund without interest extra charges recovered for such preferential location or shall be entitled to recover extra preferential location charges as the case may be.

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4. The price of the Apartment stipulated hereinabove is based on the price of all materials and labour charges pertaining thereto ruling on the 1st day of January, 1993. If, however, during the progress of work, there is increase in the price of the materials used in the construction work and or labour charges on account of any reason statutory or otherwise, the cumulative effect of such increase as assessed by the Company and intimated to the Apartment Allottee shall be debited to Apartment Allottee's

account who shall pay the same on demand. The decision of the Company in this respect shall be final and binding on the Apartment Allottee. The increased incidence may be charged and recovered by the Company from the Apartment Allotee with any one or more of the instalments or separately but in any case, before giving possession or deemed possession of the Apartment.

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16. That the possession of the said premises is proposed to be delivered by the company to the Apartment allottee within two and half/three years from the date of booking of the said premises by the time aforementioned. If the completion of the buildings (s) is delayed by reason of non-availability of steel and or cement or other building materials or water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the company civil commotion or by reason of war or enemy action or earthquake of any act of god or if non-delivery of possession is as a result of any act, notice, order, rule or notification of the government and or any other public competent authority or for any other reason beyond the

control of the company and in any of the aforesaid events the company shall be entitled to a reasonable extension of time for delivery of possession of the said premises.

The Company as a result of such a contingency arising reserves the right to alter or vary the terms and conditions of allotment or if the circumstances beyond the control of the company so warrant the company may suspend the scheme for such period as it may consider expedient and no compensation of any nature whatsoever can be claimed by the apartment allottee for the period of suspension of the scheme.

In consequence of the company abandoning the scheme the company liability shall be limited to the refund of the amount paid by the allottee without any interest or any other compensation whatsoever.

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18. THAT, if for any reason, the Company is unable or fails to deliver possession of the said premises to the Apartment Allottee within the time specified in clause 16 above, or within any further period or periods as agreed to by and

between the parties hereto, then in such case, the Apartment Allottee shall be entitled to give notice to the Company terminating the Agreement, in which event the Company shall be at liberty to sell and dispose of the said premises to any person at such price and upon such terms and conditions as the Company may deem fit. The Company shall within a reasonable time from the date of receipt of such notice and sale of the premises, refund to the Apartment Allottee the aforesaid amount of earnest money and the further amount, that may have been received by the company for the apartment allottee as part payment(s) in respect of the said premises neither party shall have any other claim against the other in respect of the said premises or arising out of this Agreement.

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21(d). That the Company shall endeavour to handover, to the Apartment Allottee, the Possession of the premises as merely a “Licencee” on monthly licence basis on the Apartment Allottee completing payment of 40% of the sale price and other charges and the Apartment Allottee agree to pay the balance 60%

of the sale price in 30 quarterly instalments as indicated in schedule of payments (Annexure II).

If, however for any reason whatsoever, the Company is unable to handover possession/deemed possession of the Apartment within the agreed time, the Apartment Allottee shall continue to make payment to the Company only of the agreed equated quarterly instalments including interest @ 18% per annum on reducing balance payment basis. The Licence Fee shall, however, become payable from the date of the possession/deemed possession of the Apartment."

4. Though the possession of the flats was to be handed over to the appellants in January 1996, according to the appellants, construction commenced only in June, 1996. The appellants continued to make payment of the instalments as per schedule of payments annexed with the ABA. An amount of Rs.14,62,552/- was paid till 14.4.1997 for each flat. On 21.04.2007, the respondent issued a Circular apologizing for the delay in construction which was due to major improvements being carried out in specifications and facilities in order to provide a better

product. The circular also referred to the delay in obtaining Government approvals. The appellants were informed about the improvements in the project that were being introduced which included (a) provision for extra lift, (b) large entrance hall, (c) imported marble, (iv) copper pipes for plumbing, (v) standby generator and (vi) wooden flooring in study room.

5. The respondent sent a demand letter on 02.06.1997 by which the appellants were intimated about the extra charges which worked out to Rs. 8,78,905/- for each flat on account of increase in the area by 9.236 sq. meters, escalation charges on material and labour, external electrification costs including 24 hours back-up power, sub-station DG sets, etc. and costs for firefighting measures including sprinkler system and smoke detectors which were being provided. On 26.06.1998, the respondent informed the appellants that the completion certificate had been received from the authorities and that the apartments were ready for use and occupation. The appellants were requested to make the payments of

outstanding dues and complete the documentation work. According to the Statement of Account sent by the respondent, an amount of Rs.19,88,242/- was already paid and the balance due as on 31.07.1998 was Rs.7,46,919/-. In response to the demand for payment of outstanding amount made by the respondent, the appellants sent a letter dated 12.08.1998. In this letter, the appellants informed the respondent that they had paid money in excess of what was due and sought refund of the excess amount paid. Another reminder was sent by respondent asking the appellants to remit an amount of Rs.8,84,287/- which was overdue. Thereafter on 19.01.1999, the respondent cancelled the ABA as the outstanding amount was not paid. The respondent also issued cheques refunding the amounts paid for the flat by the appellants which were not encashed by the appellants.

6. The appellants filed a complaint bearing RTPE No. 36 of 1999 under Sections 10(a)(i) IV, 36A, 36B(a) and (d), 36D and 36E read with Sections 2(i) and 2(o) of the MRTP

Act along with Regulations framed thereunder. In the complaint, the appellants sought for an inquiry into the commission of various restrictive/unfair/monopolistic trade practices by the respondent and for an appropriate cease and desist order against the respondent restraining the respondent from indulging in similar restrictive/unfair/monopolistic trade practices. Further, the cancellation of the allotment of apartment Nos. 404A, 404B, 406A and 406B “Beverly Park-I” at Qutab Enclave Complex was challenged. The appellants also sought for setting aside the extra charges levied by respondent by letter dated 02.6.1997. A direction was sought to the respondent to pay interest @ 24% *per annum* on the instalments paid by the appellants from the date of payment to the date of handing over of the possession of the apartments. The appellants also sought for a direction to the respondent to handover possession of the apartments forthwith after appropriating the amounts already paid towards basic sale price and a direction to

pay liquidated damages for loss of rental income from 15.07.1996 along with Rs.10,00,000/- as compensation.

7. A preliminary objection was raised by the respondent about the jurisdiction of MRTP to entertain the complaint. Relying upon judgments of this Court, the respondent contended that the complaint flows from an agreement, breach whereof can only be subject matter of civil suit, and therefore, a complaint of unfair trade practice cannot be entertained by the Commission. The Preliminary objection was rejected by the Commission on the ground that Sections 36-A and 37(1) of the MRTP Act related to unfair/restrictive trade practices and the Commission has jurisdiction to examine the validity of the agreement.

8. The contention of the appellants relating to monopolistic practice was rejected by the Commission. In respect of a complaint of unfair trade practice due to the delay in handing over possession of the apartments, the Commission examined the relevant clauses of the ABA and the contentions of the appellants. In particular,

clauses 16, 18 and 21(d) were referred to by the Commission to hold that no fixed period of 2 ½ to 3 (two and half to three) years was agreed upon between the parties for handing over possession of the apartments. The Commission was of the view that it is clear from the ABA that the construction and development would be in accordance with the building plan as may be approved by the Director, Town and Country Planning, Government of Haryana and that possession of the premises was only proposed to be delivered within 2 ½ to 3 (two and half to three) years. Clause 16 of the ABA was referred to by the Commission to observe that the respondent would be entitled for a reasonable extension of time for delivery of possession, in case there was any delay. Further, the Commission was of the view that the allottee was entitled to issue notice to the company terminating the ABA under clause 18 thereof, in case, respondent fail to deliver possession within the time mentioned in clause 16. The Commission concluded that since there was no misrepresentation made by respondent and there was no

material produced by the appellants to show that they entered into the agreement under duress or fraudulent representation, delay in handing over possession of the apartments to the appellants did not amount to an unfair trade practice. In so far as the extra cost demanded by the respondent resulting in unfair trade practice is concerned, the Commission was of the opinion that demand and collection of extra cost was in terms of the ABA which was agreed to by the appellants and some instalments towards extra cost have been paid by them. As the details for the demand of extra charges were given by the respondent, it cannot be said that there was any concealment on their part. The Commission further took note of the fact that the cost of escalation beyond the contract period was absorbed by the respondent. Ultimately, the Commission concluded that the appellants failed to substantiate the allegation of unfair trade practice on the ground of imposing extra charges.

9. We have heard Mr. M.L. Lahoti, learned Counsel appearing for the appellants and Mr. Pinaki Mishra,

learned Senior Counsel appearing for the respondent. The learned counsel appearing for the appellants submitted that the appellants entered into an ABA on 23.03.1993 for purchase of apartments after being misled by the advertisements issued by the respondent. According to the advertisement and brochures, possession of the apartments had to be delivered within 2 ½ to 3 (two and half to three) years from the date of signing of ABA and on prompt payment of the instalments till that date. The remaining amount could be paid by the buyers within next $7^{1/2}$ (seven and half) years. The construction of the apartments could not commence even after the expiry of a period of three years, as the building plans were approved only on 14.08.1996. It was submitted that since a clear case of misrepresentation has been made out, the respondent is guilty of unfair trade practice in not handing over the possession of the apartment within the fixed period of 2 ½ to 3 (two and half to three) years. The appellants submitted that a perusal of the ABA would show that it is a one-sided contract completely in favour

of the respondent. The buyers were made to sign on dotted lines and the conditions in the clauses of the contract would demonstrate that the ABA is lopsided tilting in favour of the builder. Such agreements have been declared to be unconscionable and *void* by this Court. Appellants further submitted that the demand of extra charges by the respondent was impermissible. As the respondent imposed extra charges which are not contemplated in the ABA, it is clear that the respondent has committed an unfair trade practice. The appellants were not informed at the time of entering into the ABA that extra charges would be levied. Moreover, the details of the extra charges were given only after persistent demands of the appellants.

10. *Per contra*, the defense of the respondent is that appellants were not coerced to enter into the ABA. It was only after understanding the implications of different clauses in the ABA, that the appellants booked 4 apartments in the project, which is a landmark property in Gurgaon today. There was no fixed time for handing

over of the possession and the delay was due to late approval of plans from the concerned authorities apart from other unforeseen reasons. It was submitted that it was open to the appellants to terminate the contract if they were aggrieved by the delay in handing over possession of the apartments. The appellants initially accepted the demand of certain amounts towards extra charges and paid some instalments towards the same. Thereafter, the appellants protested payment of extra cost. The demand of extra cost was permissible according to the terms of the ABA. As there was no misrepresentation on the part of the respondent, unfair trade practice as complained by the appellants has not been made out. The respondent submitted that majority of buyers of Beverly Park flats have taken over possession of their apartments long back without any complaint. A few others who raised some disputes have settled with the respondent. It is only the appellants who have been continuing to litigate for nearly 30 years since the date of signing of the ABA in 1993. Several attempts

were made for settling the dispute, which yielded no result.

11. The MRTP Act, 1969 was meant to ensure that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for other connected matters. The Act was made pursuant to the recommendations made by the Monopolies Enquiry Commission which submitted its report on 31.10.1965. Initially, there was no provision relating to unfair trade practices in the MRTP Act. By Section 30 of Act 30 of 1984, Sections 36A, 36B, 36D and 36E were inserted in the MRTP Act. Unfair trade practice as defined in Section 36A of the MRTP Act is a trade practice which, for the purpose of promoting the sale, use or supply of any good or for the provision of any services adopts any unfair method or unfair or deceptive practice including other practices mentioned therein. The manner in which the inquiry may be conducted by the

Commission into unfair trade practices is dealt with by Section 36B of the MRTP Act. Section 36D of the MRTP Act provides for the powers which may be exercised by the Commission while inquiring into an unfair trade practice. After conducting an inquiry, if the Commission is of the opinion that the practice is prejudicial to the public interest, or to the interest of any consumer or consumers generally, the Commission, may direct that (a) the practice shall be discontinued or shall not be repeated (b) any agreement relating to such unfair trade practice shall be void or shall stand modified in respect thereof in such manner as may be specified in the order and (c) any information, statement or advertisement relating to such unfair trade practice shall be disclosed, issued or published, as the case may be, in such manner as may be specified in the order. There was a further amendment made in the year 1991 by which Section 36C was inserted in the MRTP Act which dealt with investigation by Director General before issuing any

process in certain cases, apart from certain changes made to Sections 36A and 36D of the MRTP Act.

12. As against this, it is also necessary to deal with relevant provisions of the Consumer Protection Act, 1986 (hereinafter referred to as the "Consumer Protection Act") as the appellants have relied upon judgments of this Court on unfair trade practice in disputes under the Consumer Protection Act. The Consumer Protection Act was meant for better protection of the interest of consumers and for the purpose, to make provision for the establishment of consumer councils and other authorities, for settlement of consumer disputes and for matter connected therewith. Section 2(r) was introduced in the Consumer Protection Act by an amendment with effect from 18.06.1993. Section 2(r) of the Consumer Protection Act defines unfair trade practice, which is exactly the same as the definition of unfair trade practice in MRTP Act. In case a consumer satisfies the consumer forum that the goods complained against, suffer from any defect or there is deficiency in service, the opposite party

can be directed to remove the defect or replace the goods free from defect. The appropriate forum can direct removal of deficiency in service and direct the opposite party to discontinue the unfair trade practice or restrictive trade practice. The forum also has the power to award any amount towards compensation for any loss or injuries suffered by the consumer due to the negligence of the opposite party.

13. It would be relevant to refer to the law laid down by this Court in respect of unfair trade practices under the MRTP Act. In **M/s Lakhanpal National Limited** v. **M.R.T.P. Commission & Anr.[1],** this Court has held as follows: -

> "7. However, the question in controversy has to be answered by construing the relevant provisions of the Act. The definition of "unfair trade practice" in Section 36-A mentioned above is not inclusive or flexible, but specific and limited in its contents. The object is to bring honesty and truth in the relationship between the manufacturer and the consumer. When a problem arises as to whether a particular act can be condemned as an unfair

1 (1989) 3 SCC 251

trade practice or not, the key to the solution would be to examine whether it contains a false statement and is misleading and further what is the effect of such a representation made by the manufacturer on the common man? Does it lead a reasonable person in the position of a buyer to a wrong conclusion? The issue cannot be resolved by merely examining whether the representation is correct or incorrect in the literal sense. A representation containing a statement apparently correct in the technical sense may have the effect of misleading the buyer by using tricky language. Similarly, a statement, which may be inaccurate in the technical literal sense can convey the truth and sometimes more effectively than a literally correct statement. It is, therefore, necessary to examine whether the representation, complained of, contains the element of misleading the buyer. Does a reasonable man on reading the advertisement form a belief different from what the truth is? The position will have to be viewed with objectivity, in an impersonal manner. It is stated in Halsbury's Laws of England (Fourth Edition, paragraphs 1044 and 1045) that a representation will be deemed to be false if it is false in substance and in fact; and the test by which the representation is to be judged is to see

whether the discrepancy between the fact as represented and the actual fact is such as would be considered material by a reasonable representee. "Another way of stating the rule is to say that substantial falsity is, on the one hand, necessary, and, on the other, adequate, to establish a misrepresentation" and "that 'where the entire representation is a faithful picture or transcript of the essential facts, no falsity is established, even though there may have been any number of inaccuracies in unimportant details. Conversely, if the general impression conveyed is false, the most punctilious and scrupulous accuracy in immaterial minutiae will not render the representation true."

14. Referring to the amendment made to the MRTP Act in 1984, this Court in **M/s Philips Medical System (Cleveland)** v. **Indian MRI Diagnostic & Research Limited[2],** held that the object of the amendment broadly was to prevent false or misleading advertisements, or false representations, claiming that the goods sold are of a certain standard or have certain qualities, which, in fact, they do not possess.

2 (2008) 10 SCC 227

Amendment made in 1984 was to ensure that the persons buying certain goods were not duped or misled by a representation or advertisement which stated that these goods have certain features or qualities which, in fact, they do not possess.

15. In **Rajasthan Housing Board** v. **Parvati Devi**[3]**,** delay in delivering of possession of a building amounting to unfair trade practice was dealt with in the following terms: -

> "14. For deciding such question, the Commission has to find out whether a particular act can be condemned as an unfair trade practice; whether representation contained a false statement and was misleading and what was the effect of such a representation made to the common man. The issue cannot be resolved by merely holding that representation was made to hand over the possession within stipulated period and the same is not complied with or some lesser constructed area is given after the construction of the building. The Commission has to find out whether the representation, complained of, contains the element of misleading the buyer and whether

3 (2000) 6 SCC104

buyers are misled or they are informed in advance that there is likelihood of delay in delivering the possession of constructed building and also increase in the cost. For this purpose, terms and conditions of the agreement are required to be examined by the Commission. Not only this, the Commission is required to consider whether the Board has adopted unfair method or deceptive practice for the purpose of promoting the sale, use or supply of any goods or for the provisions of any services. Unless there is finding on this issue, appellant Board cannot be penalized for unfair trade practice."

16. The thrust of the complaint preferred by the appellants is that the respondent is guilty of unfair trade practice for misrepresentation as there was delay in handing over possession of the apartments and extra charges were imposed arbitrarily. According to the appellants, there was a fixed period of 2½ to 3 (two and half to three years) during which the apartments should have been handed over and there was considerable delay in the completion of the project. Imposition of extra cost was impermissible as the buyers were not

informed about such future cost at the time when the ABA was entered into amounting to a false representation resulting in an unfair trade practice.

17. In so far as unfair trade practice with reference to the delay in handing over possession is concerned, the relevant clauses in the ABA which was entered into between the parties on 23.3.1993 are clauses 16, 18 and 21(d) of the aABA. According to clause 16, the company is entitled for reasonable extension of time for delivery of possession of the premises, in case, possession could not be delivered within $2^{1/2}$ to 3 (two and half to three) years from the date of booking. The reasons for which a reasonable extension of time is available are elaborated in clause 16. Clause 18 permits the allottee to terminate the ABA by giving a notice if the company fails to deliver the possession of the premises within the period specified in clause 16. The amount of earnest money and other amounts paid by the allottees shall then be refunded by the company. According to clause 21(d), the company shall endeavour to hand over the possession of

premises to the apartment allottee as a licensee on monthly license basis on completion of payment of 40% of the sale price and other charges as per clause 21(d). There is no doubt that there has been a delay in completion of the project beyond three years. However, the appellants did not issue any notice for termination of the agreement. On the other hand, notices issued by the appellants on 24.02.1998, 22.04.1998 and 12.08.1998 related to demand of extra costs. The appellants did not, at any point of time, make a grievance relating to delay in handing over of possession of the apartment. The main relief in the complaint filed by the appellants is to declare the termination of the ABA by the respondent as *void.* A further direction was sought for handing over the apartments without any payments towards the remaining principal amount and extra charges alongwith damages and compensation.

18. In **Bangalore Development Authority** v. **Syndicate Bank[4],** this Court examined the question whether the time is of essence in a construction contract

4 (2007) 6 SCC 711

which was the subject matter of dispute therein. Bangalore Development Authority pleaded that the time was not the essence of the contract. This Court concluded that in a contract involving construction, time is not the essence of the contract unless specified. This Court referred to letters written by the respondent in which he did not make time of performance as the essence of the contract and did not fix even any reasonable time for performance. This Court also took notice of the fact that the respondent therein did not choose to terminate the contract in view of the manifold increase in the value of the houses. Much later, the respondent demanded delivery of the property. In the facts of the said case, this Court held that it could not be said that the respondent made time the essence of contract in a manner as recognized by law. The Court also noted that the value of the house had escalated to more than 10 times from the date of the Agreement and the respondent therein had the benefit of such rise in price and value. Finally, this Court held that there was no

deficiency in service by the appellant entitling the respondent for any compensation.

19. In the present case, though there is a clause in the ABA which mentioned that the possession has to be handed over within a period of $2^{1/2}$ to 3 (two and half to three) years from the date of ABA, it cannot be said that time was made the essence of the contract as a reasonable extension of time for delivery was permissible as per clause 16. There was no intention on the part of the appellants to insist on time being the essence of contract as they did not terminate the ABA due to delay in handing over possession of the apartments which they could have in accordance with clause 18 of the ABA. As stated earlier, no notice was issued by them which related to their grievance with respect to the delay in handing over the possession. The allegation in the complaint is that the respondent has committed unfair trade practice by seeking to recover large sums of money from the buyers without handing over possession of the flats. In the garb of delay in

handing over possession of the property, the appellants are seeking possession of a property, the cost of which is more than 10 times the price at which it was offered, without even paying the balance basic sale price.

20. This Court in ***Colgate Palmolive (India) Ltd. v. MRTP Commission & Ors.***[5], elucidated the following five ingredients to constitute an offence of unfair trade practice: -

"1. There must be a trade practice (within the meaning of section 2(u) of the Monopolies and Restrictive Trade Practices Act);
2. The trade practice must be employed for the purpose of promoting the sale, use or supply of any goods or the provision of any services;
3. The trade practice should fall within the ambit of one or more of the categories enumerated in clauses (1) to (5) of Section 36A;
4. The trade practice should cause loss or injury to the consumers of goods or services;
5. The trade practice under clause (1) should involve making a "statement" orally or in writing or by visible representation."

5 (2003) 1 SCC 129

None of the above ingredients constituting an offence of unfair trade practice have been substantiated by the appellants. On a detailed consideration of the material on record, we are of the considered view that there has been no misrepresentation made by the respondent amounting to an unfair trade practice for the delay in handing over possession of the apartments.

21. The extra charges that were demanded by the respondent were pursuant to clauses 2(b), 4, 15 and 16 of the ABA. According to the appellants, demand of extra charges after the commencement of construction amounted to manipulation of prices which resulted in increase in the cost to the detriment of the buyers. Extra cost demanded by the respondent was incurred due to introduction of a third lift in each tower, space being provided for laundry facility in basement and larger entrance lobbies in each tower. Other charges relate to firefighting system, external electrification and normal operation and maintenance costs of recreational facilities. It is pertinent to note that the cost towards

escalation of material and labour after the 30.03.1996 was not included in the demand. Even the additional cost incurred due to revision in the schedule was born by the respondent. There is no dispute that appellants had paid initial instalments towards extra charges. The respondent had also duly informed the appellants of the details of the extra cost being incurred. We are not in agreement with the contention of the appellants that imposition of extra charges is a calculated and pre-planned design of the respondent. We are convinced that there is no misrepresentation made by the respondent and, therefore, we reject the allegation of unfair trade practice.

22. Relying upon the judgments of this Court in **Central Inland Water Transport Corporation Ltd. & Anr.** v. **Brojo Nath Ganguly and Anr.**[6], **Pioneer Urban Land & Infrastructure Limited** v. **Govindan Raghavan**[7], **Wing Commander Arifur Rahman Khan And Aleya Sultana & Ors.** v. **DLF Southern Homes**

6 (1986) 3 SCC 156
7 (2019) 5 SCC 725

Private Limited[8] and **Ireo Grace Realtech Private Limited** v. **Abhishek Khanna & Ors**[9]**,** the appellants have contended that the terms of the ABA are unconscionable. In **Central Inland Water Transport Corporation Ltd.** case (supra), clause 9(1) of Central Inland Water Transport Corporation Ltd. Service Discipline and Appeal Rules, 1979, providing for termination of a permanent employee subject to three months' notice was challenged as being violative of Article 14 of the Constitution of India. Upholding the judgment of the Calcutta High Court declaring the said rule as *void,* this Court observed that Rule 9(1) was opposed to public policy and was *void* under Section 23 of the Indian Contract Act, 1872. Delay in handing over possession of the flat to the purchaser was the subject matter in **Pioneer Urban Land & Infrastructure Limited** (supra). The purchaser in that case filed a consumer compliant seeking refund of the amount paid by him in view of the delay in handing over possession

8 (2020) 16 SCC 512
9 (2021) 3 SCC 241

of the flat along with interest, which was allowed by the National Commission. The builder approached this Court challenging the order passed by the National Commission. The order of this Court upheld the order of National Commission while observing that the contract between the parties therein was one sided. As the builder could not fulfil its contractual obligation in offering the possession of the flat within a reasonable period, this Court directed refund of the entire amount deposited by the purchaser. Similarly, the issue that fell for consideration in **Wing Commander Arifur Rahman Khan and Aleya Sultana** (supra) was whether the flat buyers were constrained by the stipulation in clause 14 of apartment buyer agreement which provided for compensation for delay in completion of the project @ Rs.5/- per sq. feet per month. After examining the agreement, this Court held that the agreement was one sided as it provided for payment of interest rate @ 15% per annum by the allottee in case there is delay of payment in accordance with schedule as opposed to the

stipulation of compensation @Rs. 5/- per sq. ft per month in case of delay on the part of the builder in completion of the project. In view of the said conditions, this Court was of the opinion that the agreement is one sided and therefore, the consumer fora have jurisdiction to award compensation more than what was agreed upon by the parties in the agreement. In **Ireo Grace Realtech Private Ltd.** case (supra), the order of the National Commission directing refund of amount deposited by purchasers along with appropriate compensation was approved by this Court. The concerned apartment buyer's agreement was examined therein and it was held that the consumer fora have the jurisdiction to award just and reasonable compensation as an incident of their power to direct removal of deficiency in service.

23. There is no quarrel with the proposition in **Central Inland Water Transport Corporation** (supra) that an unconscionable term in a contract is *void* under Section 23 of the Indian Contract Act, 1872. The other cases

relied upon by the appellants pertain to disputes under the Consumer Protection Act. All the three cases relate to either refund of the amounts deposited by the flat buyers or payment of compensation for delay on the part of the builder in handing over possession of the flats on a clear finding of fact that the delay in handing over possession was solely attributable to the builder. After examining the terms of the Agreement in those cases, this Court was of the opinion that entitlement of the flat buyers to compensation for deficiency in service on the part of the builder cannot be restricted by the agreements which are one sided. The said judgments are not applicable in the instant case. The reliefs claimed in the above cases are completely different from the main reliefs in the present case. In the cases cited above, the grievance of the flat buyers was that since there had been a substantial delay in delivery of the apartments, the buyer should be entitled to terminate the agreement and to recover the amounts already paid along with just and reasonable interest/compensation which could not be confined to the

terms as stated in a one-sided agreement. As against this, the appellants in this case are essentially seeking possession of the apartments by declaration of termination of the agreement by the respondent to be void, without having to pay any money towards extra charges or even the basic sale price. There has been no specific reference to any clause in the ABA by which the appellants appear to be aggrieved so as to shock the conscience of this Court to travel beyond its terms in light of it being an unconscionable contract.

24. There is an averment in para 16 of the complaint that ABA is an unconscionable contract opposed to public policy as a consumer has no bargaining power and is an easy victim of unfair trade practice. There is no reference to any clause of the ABA, in particular, to substantiate the allegation. On the other hand, the appellants repeatedly refer to the allegation of delay in handing over possession and imposition of extra charges apart from non-refund of interest on the amounts paid by them. The appellants are not entitled to any relief on this count as we have

already approved the order of MRTP by holding that there is no unfair trade practice on the part of the respondent. The compensation sought by the appellants cannot be granted as Section 12-B of MRTP Act empowers the Commission to grant compensation only when any loss or damage is caused to a consumer as a result of a monopolistic, restrictive or unfair trade practice[10]. As the appellants have failed to prove unfair trade practice on the part of the respondent, they are not entitled to any compensation.

25. The learned Senior Counsel for the respondent submitted that the price of each flat is Rs.3.25/- crores today. In response to the suggestion made by this Court, he obtained instructions from the respondent and submitted that the respondent is willing to handover the flats provided the appellants pay the balance amount payable i.e., Rs.31,52,933/- for each flat. The breakup of Rs.31,52,933/- is given as follows: -

1.	Rs.14,25,684/- is the balance to be paid towards basic sale price and interest on

10 Girish Chandra Gupta v. U.P. Industrial Development Corn. Ltd. & Ors., (2012) 13 SCC 452

	instalments/license fee.
2.	The balance amount payment towards extra charges is Rs.6,59,179/-
3.	Maintenance charges till 01.11.2021 calculated at Rs.10,14,281/-
4.	House tax recoverable is shown as Rs.53,789/-
5.	After deducting Rs.19,82,422/- which was paid by the appellants for each apartment, the appellants have to pay Rs.31,52,933/- for each apartment.

26. It is settled law that final relief granted by this Court need not be the natural consequences of the *ratio decidendi* of its judgment. (See: ***Sanjay Singh & Anr. v. U.P. Public Service Commission & Anr.***[11] ***and U.P. Public Service Commission v. Manoj Kumar Yadav & Anr.***[12]**).** Though, we have upheld the order of MRTP Commission, in the interest of justice, the respondent shall handover possession of the flats to the appellants on payment of Rs.25,00,000/- (Rupees Twenty-Five Lakhs Only) for each flat by the appellants.

27. For the foregoing reasons, the appeal is disposed of with a direction to the appellants to pay Rs.25,00,000/-

11 (2007) 3 SCC 720
12 (2018) 3 SCC 706

(Rupees Twenty-Five Lakhs Only) for each flat within a period of four weeks from today and the respondent shall handover possession of the flats to the appellants within a week from the date of payment.

.....J
[L. NAGESWARA RAO]

.....J.
[B.R. GAVAI]

.....J.
[B.V. NAGARATHNA]

New Delhi,
January 25, 2022.