

(2010) 08 AP CK 0113

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 26520 and 28246 of 2009 and 302, 304, 305, 339, 356, 357, 360, 364, 405, 429, 3947, 5003, 5088, 5091, 5121, 5131 and 5903 of 2010

Narne Constructions Private Limited

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

Consumer Protection Act, 1986 — Section 11, 14(1), 16, 2, 2(1)
Employees State Insurance Act, 1948 — Section 75

Citation : (2011) 1 ALD 342 : (2011) 1 ALT 702

Hon'ble Judges : Noushad Ali, J;Goda Raghuram, J

Bench : Division Bench

Advocate : D. Prakash Reddy and V.L.N.G.K. Murthy for Venkat Reddy, for the Appellant; B. Mayur Reddy, T. Balaji, G. Rama Gopal, Srinivas Karra and P. Shiv Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Noushad Ali, J.—In this batch of cases, the Petitioner-company seeks a ruling on the threshold jurisdiction of the consumer fora in entertaining consumer disputes as presented by the Respondents (complainants) in each of their consumer cases.

2. This batch of 19 cases falls in two categories - W.P. Nos. 28246 of 2009, 302 of 2010, 3947 of 2010, 5091 of 2010, 26520 of 2009, 360 of 2010, 364 of 2010, 405 of 2010, 429 of 2010, 304 of 2010, 305 of 2010, 339 of 2010, 356 of 2010 and 357 of 2010 have been filed at pre-decisional stage seeking writ of prohibition; W.P. Nos. 5003 of 2010, 5088 of 2010, 5121 of 2010, 5131 of 2010 and 5903 of 2010 are post-decisional cases seeking writ of Certiorari. The facts of each writ petition would be referred to later at the relevant stage.

3. In all the writ petitions, the Petitioner raised common questions of law on the maintainability of the consumer cases instituted by the Respondents (complainants) as falling beyond the jurisdiction of the consumer fora established

under the Consumer Protection Act, 1986 (for brevity "the Act"). The writ petitions, therefore, are clubbed and disposed of together by this common order.

4. For the sake of convenience, the sole writ Petitioner (common in all the writ petitions) is hereinafter referred to as "opposite party" and the contesting Respondents in each of the writ petitions are hereinafter referred to as the "complainants".

BRIEF FACTS:

5. The brief facts which led to the filing of the writ petitions are that the opposite party, carrying on the business of real estate to provide housing plots, invited members of public through paper publication and brochures to purchase plots in its ventures viz., "Central Park-II", "Central Part-III", situated at Kondapur village, "Rolling Meadows Project", Madinaguda village of Serilingampally Mandal, Ranga Reddy District and "East City", B.B. Nagar, Nalgonda District. Intending purchasers were to be enlisted as members on payment of fees and allotment of plots would be made only to such members subject to certain terms and conditions. The complainants became members on payment of the said amounts and specific plots were allotted to them. The allotment of the said plots were subject to certain terms and conditions (which would be adverted to later). The cost of the plots included Development Charges. Mode of payment was either lump sum with discount on the total cost or by monthly instalments.

The complainants claim that they made payments in full as per the terms and conditions and waited for registration of the plots. On the failure of the opposite party to register, the complainants instituted cases before the respective consumer fora established under the Act seeking appropriate reliefs which included to direct the registration of the respective plots (in some cases, to release sale deeds/to withdraw cancellation of allotment/to take back the allotted plot and refund the amounts) or to pay the present market value and to pay compensation towards mental agony, loss and damages and also costs.

The opposite party would maintain that the complainants defaulted in the discharge of their obligations and that the cases as presented by each of the complainants do not come within the purview of the provisions of the Act and are not amenable to the jurisdiction of the fora established under the Act. This in brief is the cause for the opposite party for filing these writ petitions.

6. Sri D. Prakash Reddy, learned senior Counsel and Sri V.L.N.G.K. Murthy, learned Counsel, instructed by Sri Venkat Reddy Donti Reddy, advanced elaborate arguments on behalf of the opposite party. Sri B. Mayur Reddy, learned Counsel for the Union of India and Sri T. Balaji, Sri G. Rama Gopal, Srinivas Karra and Sri P. Shiv Kumar, learned Counsel for the complainants, advanced their arguments on behalf of the Union of India and the complainants.

7. The learned Counsel for the opposite party would contend that the dispute presented by the complainants is not "service" within the meaning of Section

2(o) of the Act; and the complaints as to non-registration of the plots other reliefs as sought for by the complainants would give raise to a common law remedy in a Civil Court. The dispute relates to only residential plots, not a contract for house construction, therefore, the complainant cannot be considered as a "consumer" as envisaged in Section 2(1)(d) of the Act. "Consumer" as defined would relate to goods and services and not to the transfer of immovable property. Transfer of immovable property is under the purview of provisions of the Transfer of Property Act, 1882 and the Indian Contract Act, 1872. The breach of any obligation of the contractor may give raise to enforcement of such obligations by specific performance through a Civil Court. The consumer fora therefore has no jurisdiction to deal with the matters relating to specific performance. The opposite party is not a service provider and did not commit act of deficiency. The learned Counsel would further submit that several complaints of similar nature were dealt with by different fora - District Forum I, II and III, Hyderabad and District Forum, Ranga Reddy District and conflicting views were expressed as to the maintainability of the complaints. There being no uniformity, the opposite party is exposed to multiple litigation. They would therefore contend that the consumer fora shall be declared as incompetent to deal with the cases instituted by the complainants.

8. Per contra, the learned Counsel appearing for the complainants would contend that the nature of business undertaken by the opposite party is not a sale simplicitor. An intending purchaser should first subscribe to the membership on payment of the prescribed fee and pay initial amount towards part payment of the cost of the plot. On being enlisted as a member, plot is allotted and the balance sale consideration would become payable either in instalments or in lumpsum and as per the terms and conditions of allotment, the opposite party would sell only fully developed plots and plots would be registered after final sanction of layout by the concerned Authority. The opposite party, as per the terms and conditions reserved all rights to accept or reject any obligation and also to cancel allotment of plots and refund the advance deposits standing to the credit of the member after taking service charges. They would further contend that despite full payments made, the opposite party defaulted in its obligation to register the plots. The business undertaken by the opposite party comes within the meaning of "service" and the complainant comes within the meaning of "consumer" and the default committed by the opposite party comes within the meaning of the "deficiency of service". They would therefore, contend that the cases instituted by them are maintainable before the respective consumer fora. They would further contend that in the light of the provisions of Section 3 of the Act, which provide that the provisions of the Act are in addition to and not derogation of the provisions of any other law for the time being in force, the complainants are under no obligation to invoke the common law remedy in a Civil Court.

9. To appreciate the contentions it is necessary to examine the exact nature of the dispute between the parties.

10. The opposite party started ventures to develop land as house sites and sell to the intending purchasers. As per the scheme, the intending purchasers were required to become members on payment of membership fee and on such enrolment, specific plots were allotted in the ventures preferred by the complainants at a cost which included the development charges. The scheme provided both for lump sum with discount and also payment in instalments. Broadly the terms and conditions as annexed to W.P. No. 28246 of 2009 are as follows: (conditions relating to development of plots, payment of development charges and registration after final sanction of layout by HUDA/Town and Country Planning Department are common to all the writ petitions.)

TERMS AND CONDITIONS

1. Company reserves all rights to accept/to reject any application.
2. Rs. 300/- Membership Fee is non-refundable.
3. The Company sells only fully developed plots.
4. 10% premium is to be paid for a corner plot.
5. Lumpsum payment should be made within one month of submitting the application to avail Impsum discount facility.
6. Instalment payments must be made by 15th of the month due, failing which the instalments have to be paid with 15% interest.
7. In case of default, the Company reserves the right to cancel allotment of plot (s) and refund the advance deposit amount standing to the credit of the member, after deducting service charges.
8. Registration charges and stamp duty will be borne by members, as per rates prevailing at the time of registration.
9. Plots will be registered after final sanction of layout by HUDA and receipt of complete payments from members.
10. All transactions subject to Ranga Reddy/Secunderabad/Hyderabad Jurisdiction.
11. In addition to the above, the facts pleaded in each of the consumer cases are broadly as follows:
 1. W.P. No. 28246 of 2009 - writ of prohibition to interdict the proceedings in C.C. No. 813 of 2009 on the file of the District Consumer Disputes Redressal Forum-I, Hyderabad.

The Complainant was allotted Plot No. 499 in the venture Central Park, Phase-III at a cost of Rs. 2,25,000/-, inclusive of developmental charges. The complainant paid the said amount. The opposite party delayed the registration of the plot and the reasons for the delay were communicated by letter dated 25-02-2009 stating

that the lay out plan was prepared and after carrying out the preliminary development works on the site, necessary lay out proposal was submitted to the HUDA in the year 2006 and the HUDA has been raising periodical objections. The company has cleared all the objections and approval of the draft plan was delayed for want of U.L.C. clearance by the Government. The Opposite Party also requested the complainant to shift to another venture which the complainant declined to accept. Complaining that 12 years have lapsed since the payment has been made, the Opposite Party did not inform that the HUDA authorities have not approved the venture, therefore committed unfair trade practice and deficiency of service. On the said basic pleadings, the complainant sought reliefs; to register the plot; in the alternative, to pay the present market value of the plot; to pay compensation of Rs. 3.00 lakhs towards mental agony and loss and for punitive damages u/s 14(1)(d) of the Act; and to award costs of Rs. 3,000/-.

2. W.P. No. 302 of 2010 - Writ of prohibition to interdict the proceedings in C.C. No. 749 of 2009 on the file of the District Consumer Forum-I, Hyderabad.

The complainant on becoming a Member in 1997 was allotted a corner plot bearing No. 525 in the venture Central Park, Phase-III, at a cost of Rs. 3,14,600/- which included an extra amount of Rs. 28,600/- for the said corner plot. The said amount included the development charges also. The Opposite Party assured that progress on the site would be informed once in six months. The complainant paid Rs. 10,000/- on 07-11-1997, Rs. 60,000/- under receipt dated 20-11-1997, Rs. 50,000/- under receipt dated 20-12-1997 and Rs. 1,00,000/- under receipt dated 03-01-1998 and finally Rs. 94,600/- under receipt dated 11-02-1998, thus paid the entire cost. After considerable time by letter dated 06-10-2004 the complainant was informed that the HUDA sought for certain clarifications and the Opposite Party is liaising with HUDA to ensure the expeditious commencement of the registration passes. Again by letter dated 02-05-2009 the complainant was informed that the approval was still pending and in the meanwhile U.L.C. issued orders declaring the land as surplus land and the efforts were being made for U.L.C. clearance. Pleading that despite paying the entire cost of the plot which included the development charges, the Opposite Party has not registered the plot and resorting to unfair trade practice and deficiency of service causing loss and mental agony, the complainant sought for the reliefs; to register the plot or in the alternative, to pay the present market value of the plot; to pay compensation including the punitive damages and also costs similar to the writ petition in W.P. No. 28246 of 2009.

3. W.P. No. 3947 of 2010 - Writ of prohibition to interdict the proceedings in C.C. No. 39 of 2009 on the file of the A.P. State Consumer Disputes" Redressal Commission, Hyderabad.

The complainant was allotted corner plot No. 347 in the venture Central Park, Phase-II and as per the conditions of allotment the complainant paid initial amount of Rs. 50,000/- on 29-02-1996 and the balance amount of Rs. 1,38,500/- in 55 monthly instalments at Rs. 2,500/- per month. The complainant

also paid premium of Rs. 19,850/- as the plot is corner plot. Whenever there was delay in payment of instalments, she paid additional interest also. Thus, paid the entire cost of the plot, which included the development charges. As per the brochure, the Opposite Party should obtain approval of lay out from the HUDA and register the plot and the Opposite Party kept dodging the registration and ultimately on constant persuasion, registered the plot after collecting additional amounts in June, 2007 by reducing the area to 379 square yards instead of 397 square yards as originally allotted. The Opposite Party collected additional development charges of Rs. 1,02,330/- and also interest of Rs. 97,214/- on the said development charges and for registration. The Opposite Party is also demanding Rs. 2,27,400/- as caution deposit, which is not part of the agreement, the Opposite Party is also collecting maintenance charges and threatened to withhold the registration documents if maintenance amounts were not paid. Despite the registration, the Opposite Party has not delivered the sale deed to the complainant. The Opposite Party failed to obtain HUDA approvals, due to which the complainant had to obtain permission under the lay out regularization scheme by paying additional amounts. Thus, the Opposite Party is guilty of deficiency of service and sought for the reliefs; to direct payment of Rs. 20,70,572/- being the amount excessively collected and Rs. 25,000/- towards mental agony and costs of the complaint.

The Opposite Party filed the counter and denied the various allegations made by the complainant. The Opposite Party objected to the maintainability of the complaint contending that the dispute is of civil nature amenable to the Civil Courts, but not to the jurisdiction of the Consumer Forum. Since several disputed questions are involved, the Consumer Forum cannot decide the same in summary manner. The Complainant is not a consumer and that the Opposite Party does not render any services to the complainant for consideration as required in Section 2(1)(o) of the Act. The Opposite Party also has not committed any acts of deficiency in service and the amounts paid by the complainant if at all are only towards sale consideration and the other charges paid or payable to the Opposite Party towards development charges and registration charges, which are agreed to be paid by the complainant herself. The Opposite Party has invested huge amounts of money to maintain and upkeep the entire venture and to make it suitable for habitation with all necessary amenities including development of roads, underground sewerage, water supply, parks, electricity round the clock, security etc. The complainant paid the cost of the plot and registration charges as well as the developmental charges etc., as agreed voluntarily without any coercion or undue influence. The complainant was bound to meet expenses towards developmental charges, additional developmental charges, architect charges, stamp duty and expenses in relation to clearance of the land from the respective Government Officials, thus the complainant is estopped from claiming any amount or any relief against the Opposite Party.

4. W.P. No. 5091 of 2010: Writ of prohibition to interdict proceedings in C.C. No. 803 of 2009 on the file of the District Consumer Forum-II, Hyderabad.

The complainant was allotted Plot No. 158 in the venture Central Park-II for a total consideration of Rs. 1,50,000/- inclusive of development charges. Initially, he paid Rs. 46,000/- and the balance was payable in 52 installments at Rs. 2,000/- per month upto February, 2010. Later, by letter, dated 12.1.2006, the opposite party informed the complainant that in order to meet the norms of HUDA plots were re-aligned and re-adjusted resulting in the increase of plot's size of the complainant by 50 yards for which, additional demand of Rs. 2,10,000/- at the rate of Rs. 14,000/- per sq. yd. was made. However, the opposite party without registering the plot cancelled the membership and returned an amount of Rs. 1,47,500/- vide letter, dated 2.11.2007. The complainant also paid the balance sale consideration on 20.11.2007. As the efforts of the complainant to pursue it the opposite party to withdraw the cancellation and register the plot failed, he approached the Forum alleging deficiency of service, unfair trade practice and sought for the reliefs; to direct the opposite party to withdraw the letter of cancellation of membership dated 02-11-2007; to direct the opposite party to regularize the membership by withdrawing unpaid cheque amount as a balance sale consideration and award compensation of Rs. 1.00 lakh for adopting unfair trade practice, mental agony and deficiency and costs of Rs. 20,000/-.

Upon such complaint, the Forum gave a notice dated 09-11-2009 for appearance and counter.

5. W.P. No. 26520 of 2009: Writ of prohibition to interdict proceedings in C.C. No. 741 of 2009 on the file of the District Consumer Forum-I, Hyderabad.

The complainant was admitted as a member and allotted plot Nos. 642 and 643 in the venture Central Park phase-III. The complainant paid total consideration of Rs. 4,95,000/-. An agreement was executed on 23-08-2001 in which the opposite party undertook to register the plots after developing the layout fully with black topped roads, centralized sewage disposal system, lighting and other amenities. The opposite party failed to register the plots despite several requests and the registration was delayed on the pretext of the pendency of approval of layout by the HUDA. The complainant was offered alternate plots at Medchal which is far away from the city to which the complainant declined to accept. On the failure of the opposite party to discharge its obligation, the complainant instituted the consumer dispute alleging deficiency of service and sought for the reliefs; to direct the opposite party to execute and register the sale deed in respect of the said plots or alternatively to pay Rs. 19.00 lakhs towards the present market value; to award a sum of Rs. 1.00 lakh towards damages and compensation for mental agony and for costs.

6. W.P. No. 360 of 2010: Writ of prohibition to interdict proceedings in C.C. No. 143 of 2009 on the file of the District Consumer Forum-I, Hyderabad.

The complainant was allotted two plot Nos. W44 and W45 in East City, Sector IV, B.B. Nagar, Nalgonda District in the year 1994. She made initial payment of Rs.

6,000/- and balance payable in 34 monthly instalments at Rs. 1500/- per month. The complainant paid the amount in full in addition to Rs. 14,000/- towards registration charges as demanded by the opposite party vide letter dated 10-12-2003. The complainant offered alternate plots in Block G 42 and 43 on condition to pay registration charges at Rs. 100/- per square yard. The complainant declined new plots but expressed willingness to pay Rs. 100/- per square yard for the originally allotted plots. Again the opposite party offered another plot BH 6 in Sector V which also the complainant declined. The opposite party demanded additional amounts towards development charges and delayed the registration of the plots and adopting unfair trade practice. The complainant complied with the terms and conditions and already paid development charges and the cost of the plots originally allotted. The opposite party defaulted in registering the plot. The complainant sought reliefs; to register the plots by accepting registration charges at Rs. 100/- square yard; to pay compensation of Rs. 1.00 lakh for the delay in registration and for the harassment suffered; to pay costs of Rs. 5,000/- and to pay Rs. 2,500/- towards costs of legal notice issued by the complainant.

The opposite party filed counter. While admitting that the complainant joined as a member for purchasing the plot in the year 1994, it alleged that the complainant failed to pay the development charges as agreed. The complainant has committed breach of contract and failed to perform the obligations under the terms and conditions despite reminders. The dispute involved is contractual in nature in respect of which, the Forum has no jurisdiction. The complainant should rather approach the Civil Court for specific performance. The complainant is not a consumer and the opposite party is not a service provider. After the complainant paid the amounts in the year 2004, many developments were made on the plot. The land was protected from grabbers by recruiting guards, land was developed by marking plots, laying roads, open drains, sewerage lines, streetlights etc. incurring huge expenditure for which, the complainant is liable to pay apart from registration charges and stamp duty at the prevailing rate. The complainant was informed by letter, dated 28.3.2007 to clear the outstanding dues towards cost of development charges, registration charges and interest charges. The opposite party cancelled the allotment and that the complainant is not entitled for the reliefs sought for.

The matter was posted for argument to 23-12-2009.

7. W.P. No. 364 of 2010: Writ of prohibition to interdict proceedings in C.C. No. 227 of 2009 on the file of the District Consumer Forum-III, Hyderabad.

The complainant was allotted plot No. 42, Block H in Sector IV in East City, B.B. Nagar, Nalgonda District in the year 1992. In the year 2007, the complainant was informed that initially development of Sector IV was still in progress and on the ground of escalation of costs, the complainant was asked to pay additional charges at Rs. 100/- per square yard to complete the development work, thus burdened with additional amount of Rs. 37,500/- as against Rs. 25,000/-

originally fixed. The opposite party increased the amounts from time to time. No development activity was under taken and later in 2008, the opposite party demanded payment of Rs. 1,00,750/- and Rs. 9,600/- towards maintenance charges unilaterally without there being such condition in the allotment. The plot was registered and the opposite party declined to release the document without payment of Rs. 21,156/- as on 17-06-2000. With the above pleadings, the complainant sought reliefs; to direct the opposite party to handover registered sale deed; to direct the opposite party to provide free access to the schedule property and to pay Rs. 25,000/- as liquidity charges for pain and suffering.

The opposite party filed counter. While admitting that the complainant joined as a member for purchasing the plot in the year 1994, it alleged that the complainant failed to pay the development charges as agreed. The complainant has committed breach of contract and failed to perform the obligations under the terms and conditions despite reminders. The dispute involved is contractual in nature in respect of which, the Forum has no jurisdiction. The complainant should rather approach the Civil Court for specific performance. The complainant is not a consumer and the opposite party is not a service provider. After the complainant paid the amounts in the year 2004, many developments were made on the plot. The land was protected from grabbers by recruiting guards, land was developed by marking plots, laying roads, open drains, sewerage lines, streetlights etc. incurring huge expenditure for which, the complainant is liable to pay apart from registration charges and stamp duty at the prevailing rate. The complainant was informed by letter, dated 28.3.2007 to clear the outstanding dues towards cost of development charges, registration charges and interest charges. The opposite party cancelled the allotment and that the complainant is not entitled for the reliefs sought for.

The opposite party registered the plot under constraint to avoid enhancement of registration charges.

The matter was posted for argument to 23-12-2009.

8. W.P. No. 405 of 2010: Writ of prohibition to interdict proceedings in C.C. No. 524 of 2009 on the file of the District Consumer Forum-I, Hyderabad.

The complainant was allotted plot No. 208 (CP) in the venture, Rolling Meadows Project at a cost of Rs. 5,49,000/- and the complainant paid the amount by 11-11-1998. The complainant was informed that the development works were expected to be completed by the end of 2000 and registration would be carried out by June 2001. However, there was no development and progress as such the complainant approached the opposite party to confirm the date of registration. On 28-01-2003, the opposite party informed that the HUDA approval was expected by the 1st week of February 2003 and on 28-02-2004 again informed that final clearance of HUDA was expected shortly. The opposite party, however, kept postponing the registration, but demanded the complainant to deposit Rs. 54,900/- towards registration charges and to pay 18,300/- towards additional

development charges. In 2006, again the opposite party informed the complainant that layout approval was pending with HUDA and registration process would be completed after approval. However, on 12-05-2007, the opposite party sent a statement of account informing the complainant that there were dues towards balance of cost, additional development charges and registration charges apart from the maintenance charges, caution deposit and U.L.C. charges. Ultimately, the complainant was informed that HUDA did not grant approval, but the opposite party kept insisting for the payment and although the entire amount was paid in 1998 itself. On 22-08-2007, the opposite party again informed the complainant to allot a smaller plot No. 211 and again demanded proportionate dues in each time the amounts were increased as due. Ultimately when the complainant insisted for registration, the opposite party cancelled the allotment in an illegal manner. The reliefs sought for; to execute the registration of sale deed; to pay compensation of Rs. 1.00 lakh and to pay costs of Rs. 25,000/-.

The opposite party filed counter. While admitting that the complainant joined as a member for purchasing the plot in the year 1994, it alleged that the complainant failed to pay the development charges as agreed. The complainant has committed breach of contract and failed to perform the obligations under the terms and conditions despite reminders. The dispute involved is contractual in nature in respect of which, the Forum has no jurisdiction. The complainant should rather approach the Civil Court for specific performance. The complainant is not a consumer and the opposite party is not a service provider. After the complainant paid the amounts in the year 2004, many developments were made on the plot. The land was protected from grabbers by recruiting guards, land was developed by marking plots, laying roads, open drains, sewerage lines, streetlights etc. incurring huge expenditure for which, the complainant is liable to pay apart from registration charges and stamp duty at the prevailing rate. The complainant was informed by letter, dated 28.3.2007 to clear the outstanding dues towards cost of development charges, registration charges and interest charges. The opposite party cancelled the allotment and that the complainant is not entitled for the reliefs sought for.

The matter was posted for argument to 23-12-2009.

9. W.P. No. 429 of 2010: Writ of prohibition to interdict proceedings in C.C. No. 216 of 2009 on the file of the District Consumer Forum-II, Hyderabad.

The complainant purchased plot Nos. 46 and 47 in Sector V, East City. The plots were registered on 30-01-2001. But the opposite party failed to deliver the document despite the requests of the complainant. The opposite party failed to obtain conversion of agricultural lands into non-agricultural lands from the competent authority. Although as per the allotment, Rs. 90/- per square yard alone was to be paid towards development charges, the opposite party unilaterally enhanced it to Rs. 75,000/- i.e. at Rs. 150/- per square yard, which the complainant paid. The opposite party again enhanced the said charges to Rs.

1,25,000/- at Rs. 250/- per square yard. Despite the same, the opposite party failed to undertake the development works, thus, deficiency of service. The complainant, therefore, sought for reliefs; to pay Rs. 5.00 lakhs as value of the said plots and take back the plots; to pay interest on Rs. 75,000/- and to pay Rs. 25,000/- as compensation for physical and mental harassment suffered and pay Rs. 5,000/- towards litigation costs.

The opposite party filed counter. While admitting that the complainant joined as a member for purchasing the plot in the year 1994, it alleged that the complainant failed to pay the development charges as agreed. The complainant has committed breach of contract and failed to perform the obligations under the terms and conditions despite reminders. The dispute involved is contractual in nature in respect of which, the Forum has no jurisdiction. The complainant should rather approach the Civil Court for specific performance. The complainant is not a consumer and the opposite party is not a service provider. After the complainant paid the amounts in the year 2004, many developments were made on the plot. The land was protected from grabbers by recruiting guards, land was developed by marking plots, laying roads, open drains, sewerage lines, streetlights etc. incurring huge expenditure for which, the complainant is liable to pay apart from registration charges and stamp duty at the prevailing rate. The complainant was informed by letter, dated 28.3.2007 to clear the outstanding dues towards cost of development charges, registration charges and interest charges. The opposite party cancelled the allotment and that the complainant is not entitled for the reliefs sought for.

The matter was posted for evidence on 21-12-2009.

10. W.P. No. 304 of 2010: Writ of prohibition to interdict proceedings in C.C. No. 582 of 2009 on the file of the District Consumer Forum-II, Hyderabad.

The complainant was allotted plot No. 1 (CP) in Sector-IV, Block No. PP, East City. The entire cost of the plot was paid by 31-03-1995. The complainant also paid development charges of Rs. 25,000/- as demanded. The plot was realigned and as the size of the plot increased by 30 square yards, the complainant had to pay additional amounts towards costs of development charges. However, the opposite party cancelled the allotment alleging that the complainant wilfully withheld the regular payments towards development charges. The complainant therefore sought for the reliefs; to register the plot; to pay Rs. 10,000/- as compensation towards pain of mental agony and for costs.

The opposite party filed counter. While admitting that the complainant joined as a member for purchasing the plot in the year 1994, it alleged that the complainant failed to pay the development charges as agreed. The complainant has committed breach of contract and failed to perform the obligations under the terms and conditions despite reminders. The dispute involved is contractual in nature in respect of which, the Forum has no jurisdiction. The complainant should rather approach the Civil Court for specific performance. The complainant

is not a consumer and the opposite party is not a service provider. After the complainant paid the amounts in the year 2004, many developments were made on the plot. The land was protected from grabbers by recruiting guards, land was developed by marking plots, laying roads, open drains, sewerage lines, streetlights etc. incurring huge expenditure for which, the complainant is liable to pay apart from registration charges and stamp duty at the prevailing rate. The complainant was informed by letter, dated 28.3.2007 to clear the outstanding dues towards cost of development charges, registration charges and interest charges. The opposite party cancelled the allotment and that the complainant is not entitled for the reliefs sought for.

The matter was posted to 05-01-2010 for evidence.

11. W.P. No. 305 of 2010: Writ of prohibition to interdict proceedings in C.C. No. 860 of 2008 on the file of the District Consumer Forum-I, Hyderabad.

The complainant was allotted plot No. 47 in Rolling Meadows Project. The complainant paid full cost of Rs. 3,36,000/- by September 2000. However, the opposite party failed to obtain final approval of the HUDA, but insisted for additional development charges, maintenance charges and C.D/U.L.C. charges. The complainant complied with the demands. The opposite party thereupon executed the sale deed on 30-01-2008. In the process, the opposite party illegally collected additional amounts in the name of development charges and maintenance charges etc. The complainant sought for reliefs; to refund the additional amounts collected with interest; to pay compensation of Rs. 50,000/- towards mental agony and pay costs of Rs. 10,000/-.

The opposite party filed a counter and additional counter stating that plots were allotted prior to the completion of development works on condition that registration would be done after final sanction of layout by HUDA. The cost of the allotted plot included the development charges, but as the cost of the development works increased, additional amount was demanded towards development charges, to which the complainant agreed and paid. The U.L.C. charges were demanded for securing exemption from the concerned authority and after registering the plot, the complainant has mischievously filed the complaint. In the additional counter it raised objection to the maintainability of the dispute contending that the same is contractual and amenable only to Civil Courts, not to consumer forum.

12. W.P. No. 339 of 2010: Writ of prohibition to interdict proceedings in C.C. No. 650 of 2009 on the file of the District Consumer Forum-III, Hyderabad.

The complainant was allotted plot No. 164 in Rolling Meadows Project. The complainant paid the entire sale consideration and due only in respect of the registration charges. However, the opposite party demanded additional development charges on the ground that the amounts were required for obtaining revised enhanced layout fee. Amounts were demanded towards development charges, registration charges, interest charges, C.D. and U.L.C.

charges and maintenance charges. The opposite party delayed the registration which caused escalation in the registration charges and it also failed to obtain required permissions and sanctions from the concerned authorities. Therefore, the opposite party has committed deficiency of service and adopted unfair trade practice. The complainant therefore sought for the reliefs; to obtain necessary permission, sanction from the concerned authorities and register the plot without demanding additional charges; to direct opposite party to bear registration charges; to award Rs. 5.00 lakhs towards mental agony and suffering; to refund amount of Rs. 10,000/- which was additionally collected with interest and Rs. 20,000/- towards costs of the complaint.

The opposite party filed counter and denied the various allegations, stating that it incurred huge expenditure for development of said layout, therefore, demanded amounts towards development charges, maintenance of plot for several years and the complainant failed to pay the development charges and breached the contract. It also raised objection as to the maintainability of the dispute contending that the same is contractual and amenable only to Civil Courts, not to consumer forum.

The matter was posted for evidence to 23-12-2009.

13. W.P. No. 356 of 2010: Writ of prohibition to interdict proceedings in C.C. No. 864 of 2008 on the file of the District Consumer Forum-II, Hyderabad.

The complainant was allotted a plot No. 59 in Block QQ Sector-IV of East City. The complainant paid the entire cost of the plot. The complainant further paid the amounts towards development charges at Rs. 100/- per square yard. The opposite party kept the registration postponed and changed the allotment of plot and although the complainant agreed to bear the enhanced registration charges, the opposite party failed to register. On the other hand, the allotment was cancelled on the ground that development charges were not paid with a fraudulent intention to resale for higher cost. He sought for reliefs; to register the plot; to pay the compensation of Rs. 1.00 lakh for delaying the registration and to pay costs of the complaint.

The opposite party filed counter. While admitting that the complainant joined as a member for purchasing the plot in the year 1994, it alleged that the complainant failed to pay the development charges as agreed. The complainant has committed breach of contract and failed to perform the obligations under the terms and conditions despite reminders. The dispute involved is contractual in nature in respect of which, the Forum has no jurisdiction. The complainant should rather approach the Civil Court for specific performance. The complainant is not a consumer and the opposite party is not a service provider. After the complainant paid the amounts in the year 2004, many developments were made on the plot. The land was protected from grabbers by recruiting guards, land was developed by marking plots, laying roads, open drains, sewerage lines, streetlights etc. incurring huge expenditure for which, the complainant is liable to

pay apart from registration charges and stamp duty at the prevailing rate. The complainant was informed by letter, dated 28.3.2007 to clear the outstanding dues towards cost of development charges, registration charges and interest charges. The opposite party cancelled the allotment and that the complainant is not entitled for the reliefs sought for.

14. W.P. No. 357 of 2010: Writ of prohibition to interdict proceedings in C.C. No. 48 of 2008 on the file of the AP State Consumer Disputes" Redressal Commission, Hyderabad.

The complainant was allotted plot No. 265 in Central Park, Phase-III. The complainant also paid initial amount. On the ground that the HUDA approval would be delayed in respect of Central Park, whereas in respect of Rolling Meadows Project, the approval would be obtained early and on the assurance of the quality development of the plot, the complainant purchased four plots in Rolling Meadows Project in lieu of the original plot allotted in the Central Park. Again the opposite party prevailed to restrict the claim for two plots, to which the complainant agreed and the amount already paid was adjusted towards said plots. The opposite party again demanded additional demand for payment of development charges and registration charges. The complainant complied with the demands of further amounts also and paid Rs. 25,32,000/-. Despite the same, the opposite party insisted for additional development charges. Ultimately, the opposite party cancelled the allotment of plot without any provision even after accepting the entire consideration and development charges. Therefore, the complainant sought for reliefs; to direct the opposite party to register the plots and refund the excess amounts collected and for payment of suitable compensation and costs.

The opposite party filed counter. While admitting that the complainant joined as a member for purchasing the plot in the year 1994, it alleged that the complainant failed to pay the development charges as agreed. The complainant has committed breach of contract and failed to perform the obligations under the terms and conditions despite reminders. The dispute involved is contractual in nature in respect of which, the Forum has no jurisdiction. The complainant should rather approach the Civil Court for specific performance. The complainant is not a consumer and the opposite party is not a service provider. After the complainant paid the amounts in the year 2004, many developments were made on the plot. The land was protected from grabbers by recruiting guards, land was developed by marking plots, laying roads, open drains, sewerage lines, streetlights etc. incurring huge expenditure for which, the complainant is liable to pay apart from registration charges and stamp duty at the prevailing rate. The complainant was informed by letter, dated 28.3.2007 to clear the outstanding dues towards cost of development charges, registration charges and interest charges. The opposite party cancelled the allotment and that the complainant is not entitled for the reliefs sought for.

15. W.P. No. 5088 of 2010: To quash orders in C.C. No. 62 of 2006, dated

9.3.2009 on the file of the AP State Consumer Disputes" Redressal Commission, Hyderabad.

The State Consumer Disputes Redressal Commission (for brevity "State Commission") allowed the complaint filed by the complainant directing the opposite party to execute registered sale deed in respect of Plot No. 18 in Sector-NC, Block-EN in North City, Hakimpet, Secunderabad and also awarded Rs. 50,000/- towards damages together with costs of Rs. 10,000/-.

The husband of the complainant (since deceased) who was then an N.R.I., who was allotted the said plot, paid the entire consideration as long back as on 14.9.1991. However, plot was not registered on the pretext of developmental work and the complainant was informed that the plot would be registered after the approval received from the HUDA. The opposite party kept changing the allotment from one venture to another and ultimately allotted Plot No. 18 which is subject-matter of this writ petition. Again the opposite party offered alternative plot near Medchal, which the complainant refused to accept. Therefore, the opposite party confirmed retention of Plot No. 18. As the registration was delayed, the complainant approached the State Commission and the State Commission on a consideration of the material placed before it held that the opposite party resorted to unethical practice and denied the benefit for over 18 years since 1991, did not accept the explanation of the opposite party for the delay so caused. The State Commission, therefore, allowed the complaint as noted above.

16. W.P. No. 5003 of 2010: To quash the common order of the AP State Consumer Disputes" Redressal Commission, Hyderabad, dated 12-08-2009 in C.C. No.2 of 2008.

17. W.P. No. 5121 of 2010: To quash the common order of the AP State Consumer Disputes" Redressal Commission, Hyderabad, dated 12-08-2009 in C.C. No.5 of 2008.

18. W.P. No 5131 of 2010: To quash the common order of the AP State Consumer Disputes" Redressal Commission, Hyderabad, dated 12-08-2009 in C.C. No. 1 of 2008.

19. W.P. No. 5903 of 2010: To quash the common order of the AP State Consumer Disputes" Redressal Commission, Hyderabad, dated 12-08-2009 in C.C. No.6 of 2008.

12. The State Commission disposed of the above complaints (C.C.Nos.1,2,5 and 6 of 2008) by a common order, dated 12.8.2009, against which W.P.Nos.5131 of 2010, 5003 of 2010, 5121 of 2010 and 5903 of 2010 respectively, were filed.

13. The complainants in C.C. Nos. 1 and 2 of 2008 were allottees of plot Nos. 73 and 74 in the venture "Central Park-II". The complainants in C.C. Nos. 5 and 6 of 2008 were allottees of plot Nos. 17 and 170 in Rolling Meadows Project. All the complainants paid the entire sale consideration and also the development

charges as demanded by the opposite party together with a part of registration charges. On a further demand, the complainants also paid the enhanced registration charges. Despite the same, the opposite party did not come forward and ultimately cancelled the allotments. The complainants, therefore, alleging deficiency of service and unfair trade practice approached the State Commission seeking directions to register the plots and to award compensation and costs.

14. The opposite party resisted the complaints contending that the State Commission has no jurisdiction in respect of the dispute presented by the complainants which allegedly involves specific performance of contract and that the complainants defaulted in performing their obligations.

15. On a consideration of the evidence adduced, the State Commission held that the complaints are maintainable and that the annulment of the allotment is unethical. The State Commission found that the entire sale consideration was paid and the demand for additional development charges is totally unjustified. It therefore, directed the opposite party to execute the registered sale deeds and awarded costs of Rs. 10,000/- each. Without availing the alternative remedy of appeal, the above writ petitions have been filed questioning the jurisdiction.

16. It is the main contention of the opposite party that as the transaction between the parties does not relate to housing construction, but relates to only residential plots, the complaints do not fall within the meaning of "service" as defined in Section 2(1)(o) of the Act, consequently the complainants are not consumers within the meaning of Clause (d) and the complaints since do not come within the meaning of Clause (c) are not maintainable.

17. Indisputable facts are that the opposite party promoted ventures for development of lands into house-sites and invited the intending purchasers through paper publication and brochures to join as members. The complainants responded and joined as members on payment of fees. It is also indisputable that the sale and allotment of plots were subject to terms and conditions extracted supra. The sale is not open to any general buyer but restricted only to the persons who have joined as members on payment of the stipulated fee. The members should abide by the terms and conditions set out by the seller. The sale is not on "as it is where it is" basis. The terms and conditions stipulated for sale of only developed plots and the registration of the plots would be made after the sanction of lay out by the concerned authorities. The sale price was not for the virgin land but included the development of sites and provision of infrastructure. The opposite party has undertaken the obligations to develop the plots and obtain permissions/approvals of the lay outs. The opposite party itself pleaded in its counters that the plots were developed by spending huge amounts and subsequent to the amounts paid by the complainants also plots were developed. It pleaded that huge amounts were spent towards protection of the plots from the grabbers and developed roads, open drains, sewerage lines, streetlights etc. It is therefore, manifest that the transaction between the parties is not a sale simplicitor but coupled with obligations for development and provision of

infrastructure. Inevitably, there is an element of service in the discharge of the said obligations.

18. The Apex Court in Lucknow Development Authority Vs. M.K. Gupta, while examining the jurisdiction of the Consumer Fora under the Act considered the various definitions such as "Consumer", "Service", "Trader", "Unfair Trade Practice", observed that a scrutiny of various definitions indicate that legislature has attempted to widen the reach of the Act. Each of these definitions are in two parts, one, explanatory and the other expandatory. The explanatory or the main part itself uses expressions of wide amplitude indicating clearly its wide sweep, then its ambit is widened to such things which otherwise would have been beyond its natural import.

19. The Apex Court after referring to the judgments in Regional Director, Employees' State Insurance Corporation Vs. High Land Coffee Works of P.F.X. Saldanha and Sons and Another, ; Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, and The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, observed thus:

The provisions of the Act thus have to be construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit oriented legislation. The primary duty of the Court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to the attempted objective of the enactment.

20. After noting that a National or State Commission under Sections 21 and 16 and a Consumer Forum u/s 11 of the Act is entitled to entertain a complaint depending on valuation of goods or services and compensation claimed, and the nature of the complaint which can be filed according to Clause (c) of Section 2 of the Act, observed as under:

The right thus to approach the Commission or the Forum vests in consumer for unfair trade practice or defect in supply of goods or deficiency in service. The word "consumer" is a comprehensive expression. It extends from a person who buys any commodity to consume either as eatable or otherwise from a shop, business house, corporation, store, fair price shop to use of private or public services. In Oxford Dictionary a consumer is defined as, "a purchaser of goods or Services". In Black's Law Dictionary it is explained to mean, "one who consumes". Individuals who purchase, use, maintain, and dispose of products and services. A member of that broad class of people who are affected by pricing policies, financing practices, quality of goods and services, credit reporting, debt collection, and other trade practices for which state and federal consumer protection laws are enacted. The Act opts for no less wider definition.

In construing the meaning of "consumer" as defined in Section 2(d) of the Act (as it stood before the Amendment Act 62/2002 w.e.f. 15.3.2003, which inserted the words "but does not include a person who avails of such services for any

commercial purpose") and the explanation was made applicable to Clause (i) and (ii), the Court observed thus:

It is in two parts. The first part 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 legislation 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.

21. The Apex Court further examined the meaning of word "Service" (as it stood before Amendment Act 62/2002 which inserted words "but not limited to") and observed as under:

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.

The Court further examined the question whether housing construction or building activity carried on by a private or statutory body was service within the meaning of Clause (o) of Section 2(1) of the Act as it stood prior to the inclusion of expression "housing construction" in the definition of service by Ordinance No. 24 of 1993 and observed thus:

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 Immovable 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. If a builder of a house uses substandard material in construction of a building or makes false or misleading representation about the condition of the house then it is denial of the facility or benefit of which a consumer is entitled to claim value under the Act. When the contractor or builder undertakes to erect a house or flat then it is inherent in it that he shall perform his obligation as agreed to. A flat with a leaking roof, or cracking wall or substandard floor is denial of service. Similarly when a statutory authority undertakes to develop land and frame housing scheme, it, while performing statutory duty renders service to the

society in general and individual in particular. The entire approach of the learned Counsel for the development authority in emphasising that power exercised under a statute could not be stretched to mean service proceeded on misconception. It is incorrect understanding of the statutory functions under a social legislation. 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.

22. Applying the above expansive interpretation to the instant case, it is not possible to hold that service covers contracts only in respect of construction of houses/housing. When a person offers/sells of sites/plots coupled with an assurance of development of infrastructure/amenities/lay out approvals, such an offer/sale and the obligations undertaken pursuant thereto is "service" within the meaning of Section 2(1)(o) of the Act.

23. The counsel for the Opposite Party would however contend that the core transaction relates to conveyance of title, which is the relief sought for by the complainants, falls within the ambit of specific performance of contract and the conveyance of title and the component, such as development and other amenities is a remote penumbra. Therefore, the dispute falls outside the jurisdiction of the Consumer Fora.

24. The counsel seeks to rely on the judgment of the Apex Court in U.T. Chandigarh Administration and Anr. v. Amarjeet Singh and Ors. CDJ 2009 SC 555. The contention does not commend to this Court. In the judgment cited, the Apex Court was considering a case where the U.T. Chandigarh Administration notified auction of residential and commercial sites without there being an obligation, either statutory or contractual, to provide basic amenities demanded by the Respondents therein. It was held therein that the auction was on "as is

where is" and when the sites auctioned were existing sites without any assurance/representation relating to amenities, there is no question of deficiency of service or denial of service and that where the bidder has a choice and option in regard to the site and price and when there is no assurance of any facility or amenity, the question of the owner of the site becoming a service provider, does not arise even by applying the test laid down in Lucknow Development Authority or Balbir Singh. The Apex Court observed that with reference to a public auction of existing sites (as contrasted from sites to be formed), the purchaser/lessee is not a consumer, the owner is not a trader or service provider and the grievance cannot be a complaint amenable to the jurisdiction of the fora under the Act. The said judgment on facts has no application to the instant case.

25. A scheme which promotes sale of immovable property coupled with development, obligates the promoter not only to develop the property but also convey title to the purchaser. The obligation to convey title by executing a registered sale deed is an integral part of the scheme and the obligation of the promoter which commences on the acceptance of the offer of the intending purchaser is co-terminus with the execution of the sale deed. Any activity or component of such obligation forms single inseparable transaction.

26. The Apex Court in Bangalore Development Authority Vs. Syndicate Bank, while considering a dispute between the BDA and bank relating to delay in the delivery of some of the houses referred to the decisions in Lucknow Development Authority (1 supra), Ghaziabad Development Authority Vs. Balbir Singh, Haryana Urban Development Authority Vs. Darsh Kumar etc. etc., and Ghaziabad Development Authority Vs. Union of India and Another, laid down the following principles:

(a) to (f): x x x x x x

(g) Where full payment is made and possession is delivered, but title deed is not executed without any justifiable cause, the allottee may be awarded compensation, for harassment and mental agony, in addition to appropriate direction for execution and delivery of title deed.

(h) to (j): x x x x x x

It is therefore to be held that such obligation constitutes "service" and comes within the meaning of Section 2(o) of the Act. The execution of sale deed being an integral part is also "service".

27. The contention that for enforcement of the obligation to register the sale deed, the remedy lies only in the civil Court, also does not commend to this Court. An aggrieved party in a case of this nature has his own choice either to invoke the jurisdiction of the consumer forum or to approach the civil Court. The choice is bestowed on the aggrieved person. The other side cannot compel to take recourse to anyone particular remedy. Section 3 of the Act which provides that the provisions of the Act are in addition and not in derogation of the

provisions of any other law for the time being in force, make it abundantly clear that approaching the civil Court is not the exclusive remedy available to the exclusion of remedy before a forum.

28. In *State of Karnataka Vs. Vishwabarathi House Building Coop. Society and Others*, the Apex Court observed that by reason of provisions of Section 3 the remedies provided therein supplement and not supplant the jurisdiction of the civil Courts or other statutory authorities. It is further observed that the Act provides for a further safeguard to the effect that in the event a complaint involves complicated issues requiring the recording of evidence of experts, the complainant would be at liberty to approach the civil Court for appropriate relief. The right of the consumer to approach the civil Court for necessary relief has, therefore, been provided in the Act itself. The provisions of the said Act are required to be interpreted as broadly as possible. It has jurisdiction to entertain the complaint despite the fact that other forums/courts would also have jurisdiction to adjudicate upon the lis.

29. In *The Secretary, Thirumurugan Co-operative Agricultural Credit Society Vs. M. Lalitha (Dead) through Lrs. and Others*, the Apex Court considered the dispute between the Appellant cooperative society and its members with reference to the provisions of the Consumer Protection Act vis-à-vis the provisions of the Tamil Nadu Cooperative Societies Act. The Apex Court after referring to the decisions in *Lucknow Development Authority's case* (1 supra), *M/s. Fair Air Engineers Pvt. Ltd. and another Vs. N.K. Modi, Spring Meadows Hospital and Another Vs. Harjol Ahluwalia through K.S. Ahluwalia and Another*, and *Vishwabharathi House Building Coop. Society* (7 supra) held that having regard to the scheme of the Act and purpose sought to be achieved to protect the interest of the consumer better, the provisions are to be interpreted broadly, positively and purposefully in the context of the present case to give meaning to additional/extended jurisdiction, particularly when Section 3 seeks to provide remedy under the Act in addition to other remedies provided under other Acts unless there is a clear bar. Remedies available to an aggrieved party under the Act are wider and in a given case if the parties approach both the forums created under the Act and another Act as indicated in the case of *Fair Air Engineers (P) Ltd.* (9 supra), it is for the forum under the Act to leave the parties either to proceed or avail the remedies before the other forums depending on the facts and circumstances of the case. The Court further observed that merely because rights and liabilities are created between the members and the management of the society under the Cooperative Societies Act, it cannot take away or exclude the jurisdiction conferred on the consumer forum and if the argument of ouster of jurisdiction is accepted, it leads to take away the additional remedies and forums expressly provided under the Consumer Act which is not acceptable.

30. In *Kishore Lal Vs. Chairman, Employees State Insurance Corporation*, the Apex Court while holding an employee paying contribution towards Insurance scheme under the E.S.I. Act, 1948 is a consumer and the medical service

rendered in the ESI Hospital/Dispensary within the ambit of Section 2(1)(o) of the Act and therefore the consumer forum has jurisdiction to adjudicate upon the dispute, held that the jurisdiction of the consumer forum is not ousted by virtue of the provisions of Section 75 of the ESI Act. The Apex Court referred to the decisions in Secretary, Thirumurugan Coop. Agricultural Credit Society's case (8 supra); Viswabharathi House Building Co-Operative Society's case (7 supra) and observed as under:

The trend of the decisions of this Court is that the jurisdiction of the Consumer Forum should not and would not be curtailed unless there is an express provision prohibiting the Consumer Forum to take up the matter which falls within the jurisdiction of civil court or any other forum as established under some enactment. The Court had gone to the extent of saying that if two different fora have jurisdiction to entertain the dispute in regard to the same subject, the jurisdiction of the Consumer Forum would not be barred and the power of the Consumer Forum to adjudicate upon the dispute could not be negated.

31. In Faqir Chand Gulati Vs. Uppal Agencies Pvt. Ltd. and Another, the Apex Court while examining the question whether a land owner who enters into an agreement with a builder for construction of an apartment/building and for sharing of the constructed area is a consumer to maintain a complaint against the builder as a service provider, explained the meaning of "collaboration agreement", "joint venture agreement" and held that by availing services of the builder by the land owner for a house construction for consideration to that extent land owner is a consumer, the builder is a service provider and if there is distinction in service in regard to construction, the dispute will be a consumer dispute. If there is a breach by the land owner of his obligations, the builder will have to approach a civil Court as the land owner is not providing any service to the builder but merely undertakes certain obligations towards the builder, the breach of which would furnish a cause of action for specific performance and/or damages. On the other hand, where the builder has committed breach of his obligations the owner has two options. He has the right to enforce specific performance and/or claim damages by approaching the civil Court or he can approach the forum under the Consumer Protection Act for relief as consumer.

32. On a consideration as above made, we are of the view that the complaints as presented by the each of the complainants before the consumer fora are maintainable and are amenable to jurisdiction of the consumer fora. The Consumer Fora do not suffer from lack of jurisdiction to entertain the complaints. We are not called upon to decide the Writ Petitions on the merits of the cases, nor are we inclined to do so. The Opposite Party is at liberty to pursue its defences/remedies available against each of the complaint involved in this batch of cases.

33. The Writ Petitions are devoid of merits and are accordingly dismissed. There shall be no order as to costs.