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2026:AHC-LKO:71274

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

RERA APPEAL No. - 118 of 2026

Lucknow Development Authority Thru. Its Authorized Signatory Mr. Rohit Singh .....Appellant(s)

Versus

Shivaji Singh .....Respondent(s)

Counsel for Appellant(s)	:	Abhishek Khare
Counsel for Respondent(s)	:	Anurag Singh, Utkarsh Kumar

Court No. - 7

HON'BLE SAURABH LAVANIA, J.

1. Heard learned counsel for the parties and perused the record.

2. The present appeal is based upon Clause 8.2 of the brochure, which reads as under:

> "सम्पत्ति के आबंटन के पश्चात् धनराशि वापस लेने पर *20* प्रतिशत *(*पंजीकरण धनराशि पर*)* कटौती करते हुये अवशेष धनराशि बिना ब्याज के वापस की जायेगी"

3. Considered the facts of the case, borne out from the material available on record, which in brief, are as under:-

(i) The respondent- Shivaji Singh (in short 'Allottee') deposited the booking amount i.e. Rs. 1,85,000/- on 31.01.2012 for getting a flat in Sopan Enclave, Priyadarshini Yojana, Sitapur Road, Lucknow.

(ii) After receipt of the amount, the Lucknow Development Authority (in short 'L.D.A') allotted the Flat No. C-401 in Sopan Enclave to the Allottee vide allotment letter dated 11.07.2014.

(iii) The scheme was to be completed within a period of 24 months (estimated).

(iv) The completion certificate was issued on 17.02.2020 and prior to that the appellant-LDA had issued a letter dated 04.08.2019 to the Allottee to pay the pending dues and take possession of the flat, which was not replied by the Allottee.

(v) The Allottee approached the Regulatory Authority under the provisions of the U.P. Real Estate (Regulation and Development) Act, 2016, (in short 'Act of 2016') claiming refund of the amount of Rs. 1,85,000/-.

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(vi) The Regulatory Authority dismissed the claim of the appellant vide order dated 24.02.2020.

(vii) Being aggrieved, the Allottee approached the U.P. Real Estate Appellate Tribunal, Lucknow (in short, 'Tribunal'), by means of Appeal No. 911 of 2021, arising out of Complaint No. LKO162/10/0809/2019.

(viii) The Tribunal, after considering the pleadings and documents on record including Clause 8.2 of the brochure referred above, allowed the Appeal No. 911 of 2021 vide impugned order dated 12.08.2026.

(ix) The Tribunal directed the appellant-LDA to refund the booking amount after deducting 20%, along with interest at the rate of MCLR+1 percent till the date of payment. The relevant direction issued by the Tribunal is extracted hereinbelow:

> *"iv. In APPEAL NO. 911 OF 2021, respondent no.2 is directed, to refund the booking amount after deducting 20 percent, with interest at MCLR+1 percent till the date of payment. The payment to be made within 45 days the order is uploaded."*

(x) The relevant portion of the impugned order dated 12.08.2026, on the aforesaid aspect of the case, reads as under:-

> *"25. In addition, reference must be made to clause 8.2 of the brochure, which explicitly governs cases of withdrawal of allotment. Under clause 8.2, if an allottee opts to withdraw from the scheme after the allotment of unit, Authority is entitled to deduct 20 percent of the registration amount, and the remaining money to be refunded to the allottee without interest.*
>
> *26. Clause 8.2, is extracted:*
>
> > *"*सम्पत्ति के आबंटन के पश्चात् धनराशि वापस लेने पर *20* प्रतिशत *(*पंजीकरण धनराशि पर*)* कटौती करते हुये अवशेष धनराशि बिना ब्याज के वापस की जायेगी*"*
>
> *27. On specific query, counsel for the respondent no.2 admits that none of the allotment was cancelled. It is further, submitted that clause 8.2 was not invoked by the respondent no. 2 despite appellant not having deposited any money thereafter for the unit at Sopan Enclave. The respondent no. 2 was, at best, entitled to process the refund after making 20 percent deduction from the booking amount of the unit in Sopan Enclave/Scheme. However, respondent failed to refund single penny to the appellant, rather, utilised the booking money for commercial purposes. Further, appellant proceeded to comply the terms of the brochure by pursuing the allotment of the unit at Panchsheel scheme and abandoning the allotment in the subsequent scheme (Sopan), having regard to the terms and conditions of the brochure/affidavit. The appellant was not at default.*
>
> *28. The Regulatory Authority committed manifest error in misreading clause 1.1 of the brochure upon which the impugned order rests. Further, the respondent no. 2 never cancelled the allotment of the unit/agreement of Panchsheel scheme by issuing a cancellation order. Rather, in accepting deposit as per the payment schedule waived the condition*

mandated under Clause 1.1 of the brochure, in so far, it related to the unit at Panchsheel. The respondent promoter at this stage is estopped from taking a contrary stand.

29. The purpose of clause 1.1 is to prohibit an applicant from applying for a unit in subsequent government scheme, in case the applicant owns plot/unit in any A government scheme in Lucknow, or in any city of Uttar Pradesh. It is not the case of the second respondent that on the date of application/allotment,appellant or his family was owing any plot/unit in any government scheme. The onus and burden of prove falls upon the second respondent, which it failed to discharge by leading cogent evidence. Further, the factum of cancellation cannot be pleaded by the second respondent in an affidavit without there being an order of cancellation of the allotment of the unit in Panchsheel scheme. The Regulatory Authority committed an error of law by accepting the reasons stated by the second respondent in the affidavit, without there being any cancellation order of the unit. In other words, the unit/agreement of the Panchsheel unit subsists and binds the respondent.

30. Learned counsel for second respondent finally, made feeble attempt to submit that appellant had subsequently purchased a flat in a government scheme from a private party on re-sale, hence, is prohibited, to the allotment of the unit. On specific query, learned counsel for second respondent is unable to show from brochure or any circular that any person is prohibited from purchasing subsequent to the allotment of a unit, from a private person in a government scheme. In any case, there cannot be any prohibition in law for sale/purchase of the unit/plot by any party/ government agency.

31. Be that as it may, it is not the case of the second respondent that the unit came to be purchased in Government/housing scheme from private person prior to the application made by the appellant for a unit in government scheme. The learned counsel for the second respondent failed to point out such a bar/prohibition from the brochure or the affidavit. The submission being misconceived, accordingly, rejected.

32. In view of the above discussions and the reasons stated herein above, the appellant would be entitled to possession of plot No. PS-4/805/A-1 in Panchsheel scheme and delay interest on deposit till the date of possession. In terms of Section 18 of RERA Act, 2016.

33. The appellant, further, is entitled to refund of 80 percent of booking amount deposited for the unit applied for in Sopan Enclave, along with, interest at MCLR+1 percent till the date of payment. Question no (i) is accordingly answered."

(xi) The wife of the Allottee, on account of not providing the allotted Flat No. C-401 in issue within a reasonable period, was compelled to purchase a Flat No. AL/301, in Alaknanda Apartment, Gomti Nagar Extension, Lucknow of the Scheme of L.D.A from the allottee of this Flat on 06.09.2014 (the date of registered sale deed).

4. For coming to the conclusion, this Court also considered the

observations made in various pronouncements, in the case(s):-

(i) **Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan, (2019) 5 SCC 725.** The relevant paras of the judgment are extracted hereinunder:-

> *6.6. Section 2(1)(r) of the Consumer Protection Act, 1986 defines "unfair trade practices" in the following words:*
>
> *"2.(1)(r) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice.…", and includes any of the practices enumerated therein. The provision is illustrative, and not exhaustive.*
>
> *6.7. In Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly [Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly, (1986) 3 SCC 156 : 1986 SCC (L&S) 429] this Court held that: (SCC p. 216, para 89)*
>
> *"89. … Our Judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. … This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualise the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. … These cases can neither be enumerated nor fully illustrated. The court must Judge each case on its own facts and circumstances."*
>
> *(emphasis supplied;*

(ii) **Parsvnath Developers Ltd. v. Mohit Khirbat, (2026) 5 SCC 535.** The relevant paras of the judgment are extracted hereinunder:-

23. In GDA v. Balbir Singh [GDA v. Balbir Singh, (2004) 5 SCC 65 : (2004) 121 Comp Cas 409] this Court clarified that compensation cannot follow a rigid or formulaic pattern. The quantum must depend upon the nature and extent of the loss suffered. Where possession is eventually delivered, compensation may ordinarily be lower since the allottee receives the benefit of appreciation; however, where refund alone is directed, compensation may be higher as the allottee is deprived of both possession and escalation in value. Compensation may include pecuniary loss as well as mental agony resulting from deficiency in service. The relevant paragraphs are extracted as under: (SCC pp. 80-81, paras 8-9)

"8. … Thus the Forum or the Commission must determine that there has been deficiency in service and/or misfeasance in public office which has resulted in loss or injury. No hard-and-fast rule can be laid down, however, a few examples would be where an allotment is made, price is received/paid but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss. Loss could be determined on basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises then on basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/injury, both mental and physical. Similarly, compensation can be given if after allotment is made there has been cancellation of scheme without any justifiable cause.

9. That compensation cannot be uniform and can best be illustrated by considering cases where possession is being directed to be delivered and cases where only monies are directed to be returned. In cases where possession is being directed to be delivered the compensation for harassment will necessarily have to be less because in a way that party is being compensated by increase in the value of the property he is getting. But in cases where monies are being simply returned then the party is suffering a loss inasmuch as he had deposited the money in the hope of getting a flat/plot. He is being deprived of that flat/plot. He has been deprived of the benefit of escalation of the price of that flat/plot. Therefore the compensation in such cases would necessarily have to be higher. Further if the construction is not of good quality or not complete, the compensation would be the cost of putting it in good shape or completing it along with some compensation for harassment. Similarly, if at the time of giving possession a higher price or other amounts are collected unjustifiably and without there being any provision for the same the direction would be to refund it with a reasonable rate of interest. If possession is refused or not given because the consumer has refused to pay the amount, then on the finding that the demand was unjustified the consumer can be compensated for harassment and a direction to deliver possession can be given. If a party who has paid the amount is told by the authority that they are not in a position to ascertain whether he has paid the amount and that party is made to run from pillar to post in order to show that he has paid the amount, there would be deficiency of service for which compensation for harassment must be awarded depending on the extent of harassment. Similarly, if after delivery of possession, the sale deeds or title deeds are not executed without any justifiable reasons, the

compensation would depend on the amount of harassment suffered. We clarify that the above are mere examples. They are not exhaustive. The above shows that compensation cannot be the same in all cases irrespective of the type of loss or injury suffered by the consumer."

24. The expansive understanding of "compensation" under the Act was authoritatively explained in M.K. Gupta [LDA v. M.K. Gupta, (1994) 1 SCC 243 : (1994) 80 Comp Cas 714] . Subsequent decisions, including HUDA v. Shakuntla Devi [HUDA v. Shakuntla Devi, (2017) 2 SCC 301 : (2017) 1 SCC (Civ) 651] and DLF Homes Panchkula (P) Ltd. v. D.S. Dhanda [DLF Homes Panchkula (P) Ltd. v. D.S. Dhanda, (2020) 16 SCC 318 : AIR 2019 SC 3218] reiterate that compensation must be fair, reasonable, and commensurate with the loss or injury suffered. The Consumer Fora must analyse the factual matrix and cannot mechanically restrict compensation to strict financial calculations alone.

25. The jurisprudence that emerges is clear: compensation under the Act is remedial and protective in character. Detailed mathematical ascertainment of market decline is not a sine qua non; what is required is that the award be just, reasonable and proportionate to the delay, deprivation and hardship established on record.

(iii) **LIC of India v. Consumer Education & Research Centre, (1995) 5 SCC 482**. The relevant portion of the report is extracted hereinunder:-

"in dotted line contracts there would be no occasion for a weaker party to bargain or to assume to have equal bargaining power. He has either to accept or leave the services or goods in terms of the dotted line ……. imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line.…….".

(iv) **Poornima Advani v. State (NCT of Delhi), (2025) 7 SCC 269.** The relevant paras of the judgment related to *'Doctrine of Unjust Enrichment'* are extracted hereinunder:-

26. I may also indicate that insofar as other cases cited by Mr Ramesh Singh are concerned, they are, in fact, not applicable to the facts and circumstances arising in the instant case. One cannot but state that the proposition of law as enunciated in Mafatlal Industries Ltd. v. Union of India [Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 : (1998) 111 STC 467] ; State of Maharashtra v. Swanstone Multiplex Cinema (P) Ltd. [State of Maharashtra v. Swanstone Multiplex Cinema (P) Ltd., (2009) 8 SCC 235 : (2009) 3 SCC (Civ) 333 : (2009) 24 VST 552] and Cooch Behar Contractors Assn. v. State of W.B. [Cooch Behar Contractors Assn. v. State of W.B., (1996) 10 SCC 380 : (1996) 103 STC 477] still hold the field.

26.1. However, dealing with the last case first i.e. Cooch Behar Contractors Assn. case [Cooch Behar Contractors Assn. v. State of W.B., (1996) 10 SCC 380 : (1996) 103 STC 477] , that was a case where the appellants before the Supreme Court sought exclusion of certain

components, which had been included in the expression "contractual transfer price", which in turn, determined the tax that an assessee had to pay under works contract. In this context, the Court was called upon to interpret, inter alia, the provisions of Section 6-D of the Bengal Finance (Sales Tax) Act, 1941 as amended by West Bengal Act 4 of 1984. The Court ruled that nothing could be excluded from contractual transfer price over and above that was indicated in clauses (a) to (e) of sub-section (2) of Section 6-D of the aforementioned Act. It is in this context that the Court observed that Section 6-D was a self-contained provision. In my view, there is nothing in the judgment, which would help the cause of the respondents.

26.2. Likewise, the judgment of the Supreme Court rendered in Swanstone Multiplex Cinema case [State of Maharashtra v. Swanstone Multiplex Cinema (P) Ltd., (2009) 8 SCC 235 : (2009) 3 SCC (Civ) 333 : (2009) 24 VST 552] , does not support the respondent's case. This was a case where the respondent company, which was the owner of multiplex cinema theatre had collected entertainment tax @ 45% during the period when it was either not liable to pay such tax or was required to pay tax at a concessional rate i.e. 25%. The State attempted to reclaim the benefit, which had accrued to the respondent company as they had recovered excess entertainment tax from the cinema goers. Consequently, demand notices were issued by the State in that behalf. The demand notices issued were challenged. The High Court allowed the writ petition. The Supreme Court reversed the decision [Swanston Multiplex Cinemas P. Ltd. v. State of Maharashtra, 2008 SCC OnLine Bom 1035] of the High Court.

26.3. While doing so, the Supreme Court made an interesting distinction between the doctrine of unjust enrichment as opposed to doctrine of retention. While drawing a distinction between the two concepts, the Supreme Court noticed several judgments, including the judgment rendered by the Court in Mafatlal Industries case [Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 : (1998) 111 STC 467] . Pertinently, the Court, while allowing the appeal of the State, directed the State to remit undue benefit obtained by the respondent company to a voluntary or charitable organisation, since, the State during that period, could not have levied or collected the tax from the respondent company. This aspect of the matter is reflected in paras 32, 33, 36 & 37. For the sake of convenience, the same are extracted hereafter: (Swanstone Multiplex Cinema case [State of Maharashtra v. Swanstone Multiplex Cinema (P) Ltd., (2009) 8 SCC 235 : (2009) 3 SCC (Civ) 333 : (2009) 24 VST 552] , SCC pp. 250-52, paras 32-33 & 36-37)

'32. In a given case, this Court in exercise of its jurisdiction under Article 142 of the Constitution of India may also issue other directions, as has been done in Indian Banks' Assn. v. Devkala Consultancy Service [Indian Banks' Assn. v. Devkala Consultancy Service, (2004) 11 SCC 1 : (2004) 267 ITR 179 : (2004) 120 Comp Cas 612] in a similar situation where it was difficult for the Court to direct refund of a huge amount to a large number of depositors from whom the bank had illegally collected, this Court directed that the amount be spent for the benefit of the disabled in terms of the provisions of the Persons with Disabilities (Equal

Opportunities, Protection of Rights and Full Participation) Act, 1995. This Court may take recourse to such a procedure as the State also having granted exemption was not entitled to collect the duty. In other words, it having granted an exemption, was not legally entitled thereto. We think that it would be a better course, as stricto sensu, Article 296 of the Constitution is not applicable.

33. We are passing this order keeping in view the peculiar situation as in either event it was cinema-goers who had lost a huge amount. It would be travesty of justice if the owners of the cinema theatre become eligible to appropriate such a huge amount for their own benefit. To the aforementioned extent, doctrine of unjust enrichment may be held to be applicable. A person who unjustly enriches himself cannot be permitted to retain the same for its benefit except enrichment. Where it becomes entitled thereto the doctrine of unjust enrichment can be invoked irrespective of any statutory provisions.

*

36. It may be true that hereat we are not concerned with refund of tax but then for enforcement of legal principles, this Court may direct a party to divest itself of the money or benefits, which in justice, equity and good conscience belongs to someone else. It must be directed to restitute that part of the benefit to which it was not entitled to.

37. We, therefore, direct that the State shall realise the amount to the extent the respondent had unjustly enriched itself and pay the same to a voluntary or a charitable organisation, which according to it is a reputed civil society organisation and had been rendering good services to any section of the disadvantaged people and in particular women and children. We would request the Hon'ble the Chief Minister of the State to take up the responsibility in this behalf so that full, proper and effective utilisation of the amount in question is ensured.'

26.4. Insofar as Mafatlal Industries case [Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 : (1998) 111 STC 467] is concerned, the Supreme Court was considering the scope, ambit and extent to which doctrine of unjust enrichment would apply, the Court laid down various propositions of law, which I need not advert to as none of them, in my opinion, would help the cause of the respondent.

26.5. I may, however, indicate that the Court, inter alia, ruled that where the provisions of a statute provided for refund, the refund, if any, would be granted in accordance with the statute. The Court was, amongst others, considering the provisions of Section 11-B of the Central Excises Act and Section 27 of the Customs Act.

26.6. Likewise, Maganti Suryanarayana case [Maganti Suryanarayana v.

State of A.P., 1975 SCC OnLine AP 106] cited for the proposition, that there is no inherent jurisdiction vested in the Collector of Stamps to grant refund as he is a creature of the statute or the judgment rendered in State of A.P. v. P. Laxmi Devi [State of A.P. v. P. Laxmi Devi, (2008) 4 SCC 720] , cited for the proposition that there is no equity in tax are propositions, which have held the field for so long that they appear to be cast in stone. Having said so, the foregoing discussion would show that these propositions would not impede the cause of the petitioners, given the situation obtaining in the instant case."

(emphasis in original and supplied)

(v) **Ms. Shruti vs Baldev Singh And Others on 23 May, 2017,Shimla R.S.A. No.53 of 2017**. The relevant paras of the judgment related to *'Doctrine of Unjust Enrichment'* are extracted hereinunder:-

" 21. The principle of unjust enrichment proceeds on the basis that it would be unjust to allow one person to retain a benefit received at the expense of another person. This was so held by the Hon'ble Supreme Court in Renusagar Power Co. Ltd. Vs. General Electric Co. 1994 Supp (1) SCC 644:-

"98. The principle of unjust enrichment proceeds on the basis that it would be unjust to allow one person to retain a benefit received at the expense of another person. It provides the theoretical foundation for the law governing restitution. The principle has, however, its critics as well as its supporters. In the words of Lord Diplok: "...there is no general doctrine of unjust enrichment in English law. What it does is to provide specific remedies in particular cases of what might be classed as unjust enrichment in a legal system that is based upon civil law." (See: Orakpo V. Manson Investments Ltd. 1978 AC, 104). In The Law of Restitution by Goff and Jones, it has, however, been stated "that the case-law is now sufficiently mature for the courts to recognize a generalized right of restitution" (3rd Edn., P. 15). In Chitty on Contracts, 26th Edn., Vol. I, p. 1313, para 2037, it has been stated that "the principle of unjust enrichment is not yet clearly established in English law". The learned editors have, however, expressed the view:
"Even if the law has not yet developed to that extent, it does not follow from the absence of a general doctrine of unjust enrichment that the specific remedies provided are not justifiable by reference to the principle of unjust enrichment even if they were originally found without primary reference to it." (pp. 1313- .1314, para 2037)."

22. The issue regarding undue enrichment thereafter came up before the Hon'ble Supreme Court in Indian Council for Enviro-Legal Action Vs. Union of India and others (2011) 8 SCC 161 and it was held as follows:-

"UNJUST ENRICHMENT

151. Unjust enrichment has been defined as:

"Unjust enrichment.---A benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense."
See Black's Law Dictionary, 8th Edition (Bryan A. Garner) at page 1573. A claim for unjust enrichment arises where there has been an "unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience."

152. "Unjust enrichment" has been defined by the court as the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another.

153. Unjust enrichment is "the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience." A defendant may be liable "even when the defendant retaining the benefit is not a wrongdoer" and "even though he may have received [it] honestly in the first instance." (Schock v. Nash, 732 A.2d 217, 232-33 (Delaware. 1999). USA)

154. Unjust enrichment occurs when the defendant wrongfully secures a benefit or passively receives a benefit which would be unconscionable to retain. In the leading case of Fibrosa v. Fairbairn, [1942] 2 All ER 122, Lord Wright stated the principle thus :

"... .Any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or .
some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognized to fall within a third category of the common law which has been called quasi-contract or restitution."

155. Lord Denning also stated in Nelson v. Larholt, [1947] 2 All ER 751 as under:-

"..... It is no longer appropriate, however, to draw a distinction between law and equity. Principles have now to be stated in the light of their combined effect. Nor is it necessary to canvass the niceties of the old forms of action. Remedies now depend on the substance of the right, not on whether they can be fitted into a particular frame-work. The right here is not peculiar to equity or r contract or tort, but falls naturally within the important category of cases where the court orders restitution if the justice of the case so requires."

156. The above principle has been accepted in India. This Court in several

cases has applied the doctrine of unjust enrichment.
Restitution and compound interest

157. American Jurisprudence 2d. Volume 66 Am Jur 2d defined Restitution as follows:

"The word `restitution' was used in the earlier common law to denote the return or restoration of a specific thing or condition. In modern legal usage, its meaning has frequently been extended to include not only the restoration or giving back of something to its rightful owner, but also compensation, reimbursement, indemnification, or reparation for benefits derived from, or for loss or injury caused to, another. As a general principle, the obligation to do justice rests upon all persons, natural and artificial; if one obtains the money or property of others without authority, the law, independently of express contract, will compel restitution or compensation."

158. While Section (3) (unjust enrichment) reads as under:
"The phrase "unjust enrichment" is used in law to characterize the result or effect of a failure to make restitution of, or for, property or benefits received under such circumstances as to give rise to a legal or equitable obligation to account therefor. It is a general principle, underlying various legal doctrines and remedies, that one person should not be permitted unjustly to enrich himself at the expense of another, but should be required to make restitution of or for property or benefits received, retained, or appropriated, where it is just and equitable that such restitution be made, and where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly."

159. Unjust enrichment is basic to the subject of restitution, and is indeed approached as a fundamental principle thereof. They are usually linked together, and restitution is frequently based upon the theory of unjust enrichment. However, although unjust enrichment is often referred to or regarded as a ground for restitution, it is perhaps more accurate to regard it as a prerequisite, for usually there can be no restitution without unjust enrichment. It is defined as the unjust retention of a benefit to the loss of another or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another.

160. While the term `restitution' was considered by the Supreme Court in South-Eastern Coalfields 2003 (8) SCC 648 and other cases excerpted later, the term `unjust enrichment' came to be considered in Sahakari Khand Udyog Mandal Ltd vs Commissioner of Central Excise & Customs ((2005) 3 SCC 738). This Court said:

"31. ...'unjust enrichment' means retention of a benefit by a person that is unjust or inequitable. `Unjust enrichment' occurs when a person retains

money or benefits which in justice, equity and good conscience, belong to someone else."

161. The terms `unjust enrichment' and `restitution' are like the two shades of green - one leaning towards yellow and the other towards blue. With restitution, so long as the deprivation of the other has not been fully compensated for, injustice to that extent remains. Which label is appropriate under which circumstances would depend on the facts of the particular case before the court. The courts have wide powers to grant restitution, and more so where it relates to misuse or non- compliance with court orders.

162. We may add that restitution and unjust enrichment, along with an overlap, have to be viewed with reference to the two stages, i.e., pre- suit and post-suit. In the former case, it becomes a substantive law (or common law) right that the court will consider; but in the latter case, when the parties are before the court and any act/omission, or simply passage of time, results in deprivation of one, or unjust enrichment of the other, the jurisdiction of the court to levelise and do justice is independent and must be readily wielded, otherwise it will be allowing the Court's own process, along with time delay, to do injustice.

163. For this second stage (post-suit), the need for restitution in relation to court proceedings, gives full jurisdiction to the court, to pass appropriate orders that levelise. Only the court has to levelise and not go further into the realm of penalty which will be a separate area for consideration altogether.

164. This view of law as propounded by the author Graham Virgo in his celebrated book on "The Principle of Law of Restitution" has been accepted by a later decision of the House of Lords (now the UK Supreme Court) reported as 136 Sempra Metals Ltd (formerly Metallgesellschaft Limited) v Her Majesty's Commissioners of Inland Revenue and Another [2007] UKHL 34 = [2007] 3 WLR 354 = [2008] 1 AC 561 = [2007] All ER (D) 294.

165. In similar strain, across the Altantic Ocean, a nine judge Bench of the Supreme Court of Canada in Bank of America Canada vs. Mutual Trust Co. [2002] 2 SCR 601 = 2002 SCC 43 (both Canadian Reports) took the view :

"There seems in principle no reason why compound interest should not be awarded. Had prompt recompense been made at the date of the wrong the plaintiff should have had a capital sum to invest; the plaintiff would have received interest on it at regular intervals and would have invested those sums also. By the same token the defendant will have had the benefit of compound interest. Although not historically available, compound interest is well suited to compensate a plaintiff for the interval between when damages initially arise and when they are finally paid."
This view seems to be correct and in consonance with the principles of equity and justice.

> *166. Another way of looking at it is suppose the judgment- debtor had borrowed the money from the nationalised bank as a clean loan and paid the money into this court. What would be the bank's demand.*
>
> *167. In other words, if payment of an amount equivalent of what the ledger account in the nationalised bank on a clean load would have shown as a debit balance today is not paid and something less than that is paid, that differential or shortfall is what there has been : (1) failure to restitute; (2) unfair gain by the non-complier; and (3) provided the incentive to obstruct or delay payment. Unless this differential is paid, justice has not been done to the creditor. It only encourages non-compliance and litigation. Even if no benefit had been retained or availed even then, to do justice, the debtor must pay the money. In other words, it is this is not only disgorging all the benefits but making the . creditor whole i.e. ordering restitution in full and not dependent on what he might have made or benefited is what justice requires."*

5. On the issue involved in this case, this Court also took note of the relevant passages of ***Chitty on Contracts, Twenty-fifth Edition, Volume-I,*** in para 4, which are as under:-

> *"These ideas have to a large extent lost their appeal today. "Freedom of contract", it has been said, "is a reasonable social ideal only to the extent that equality of bargaining power between contracting parties can be assumed, and no injury is done to the economic interests of the community at large." Freedom of contract is of little value when one party has no alternative between accepting a set of terms proposed by the other or doing without the goods or services offered. Many contracts entered into by public utility undertakings and others take the form of a set of terms fixed in advance by one party and not open to discussion by the other. These are called "contracts d'adhesion" by French lawyers. Traders frequently contract, not on individually negotiated terms, but on those contained in a standard form of contract settled by a trade association. And the terms of an employee's contract of employment may be determined by agreement between his trade union and his employer, or by a statutory scheme of employment. Such transactions are nevertheless contracts notwithstanding that freedom of contract is to a great extent lacking.*
>
> *Where freedom of contract is absent, the disadvantages to consumers or members of the public have to some extent been offset by administrative procedure for consultation, and by legislation. Many statutes introduce terms into contracts which the parties are forbidden to exclude, or declare that certain provisions in a contract shall be void. And the courts have developed a number of devices for refusing to implement exemption clauses imposed by the economically stronger party on the weaker, although they have not recognised in themselves any general power (except by statute) to declare broadly that an exemption clause will not be enforced unless it is reasonable. Again, more recently, certain of the judges appear to have recognised the possibility of relief from contractual obligations on the ground of "inequality of bargaining power".*

6. Upon due consideration of the aforesaid including Clause 8.2 of the brochure, this Court finds that the Tribunal has not committed any error

of law and therefore no 'Substantial Question of law' exists. It is for the following reason(s):-

(i) The Clause 8.2 is not in consonance with the basic principles of the law of Contract as to the view of this Court the same is ex-facie one sided, unfair and unreasonable term of the Contract. Therefore, the Applicant - L.D.A. is not entitled to the benefit based upon Clause 8.2, as prayed.

(ii) The project was not completed within a reasonable period i.e. the estimated time of 24 months. It is for the reason that on 31.01.2012 the booking amount i.e. Rs. 1,85,000/- was provided by the Allotter to the Appellant-L.D.A. and the completion certificate was issued on 17.02.2020.

(iii) 80% of the booking amount i.e. Rs. 1,85,000/- was utilized by the Appellant-L.D.A., which should have been returned to the Allottee after cancellation of allotment on the ground of default in paying the installment or any other ground available. It is to be noted that the Appellant-L.D.A. did not cancel the allotment. It is also apt to indicate that Unjust enrichment occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else.

7. In view of the aforesaid, the instant appeal is ***dismissed***. Cost made easy.

8. The Court records the assistance given by Ms. Urmish Shankar, Research Associate, attached with me in this judgment and finding out case laws applicable in the present case.

(Saurabh Lavania,J.)

October 6, 2026
Preeti