2026 INSC 1131

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8994 OF 2022

MADHU KUDAPA (FORMERLY KNOWN AS K. MADHUSUDHAN RAO) ...APPELLANT

VERSUS

M/S LODHA HEALTHY CONSTRUCTIONS AND DEVELOPER PRIVATE LIMITED (LHCPL) & ANR. ...RESPONDENTS

WITH

CIVIL APPEAL NOS. 4622-4623 OF 2023

JUDGMENT

ALOK ARADHE, J.

1. The purchase of a residential apartment in a project under construction is, more often than not, financed partly from the savings of the purchaser and partly by a housing loan, which the lender disburses directly to the builder under a tripartite arrangement. When the builder fails to deliver possession and the purchaser seeks a refund, the question which arises, is not merely whether the consideration must be returned, but to whom it must be returned and in what measure.

2. These three appeals preferred under Section 23 of the Consumer Protection Act, 1986 (the Act) arise out of orders

dated 01.07.2022 and 07.12.2022 passed by the National Consumer Disputes Redressal Commission, New Delhi (the Commission). Civil Appeal No. 8994 of 2022 has been filed by the complainant who had booked an apartment, namely, Mr. K. Madhusudhan Rao (the Borrower), whereas, Civil Appeal Nos. 4622-4623 of 2023 have been filed by the Housing Development Finance Corporation Limited (the Bank). In order to appreciate the grievance of the appellants relevant facts need mention which are stated *infra*.

FACTUAL BACKGROUND

3. In the year 2009, M/s Lodha Healthy Constructions and Developers Private Limited (LHCPL) (the Builder) launched a residential project called "Lodha Bellezza" at Kukatpally, Hyderabad. On 08.08.2009, the Borrower, then a Non-resident Indian, booked an apartment for a total consideration of Rs.2,30,73,876/- (Rupees Two Crore Thirty Lakh Seventy Three Thousand Eight Hundred Seventy Six only). The Borrower paid a booking amount of Rs.4,50,000/- (Rupees Four Lakh Fifty Thousand only). Thereafter, he paid sums of Rs.22,45,288/- (Rupees Twenty Two Lakh Forty Five Thousand Two Hundred Eighty Eight only) and 24,16,288/-

(Rupees Twenty-Four Lakh Sixteen Thousand Two Hundred Eighty Eight only) on 25.08.2009 and 30.09.2009 respectively. In all, the Borrower paid a sum of Rs.51,11,576/- (Rupees Fifty One Lakh Eleven Thousand Five Hundred Seventy Six only), that is, 22% of the sale consideration from his own funds. On 21.10.2009, an Agreement for Sale was executed between the Borrower and the Builder.

4. In order to make payment of the balance consideration, the Borrower approached Housing Development Finance Corporation Limited (the Bank). On 27.11.2009, the Bank sanctioned a housing loan of Rs.2 Crores. Thereafter, on 30.01.2010, a Tripartite Agreement was executed between the Borrower, the Builder and the Bank. A Loan Agreement dated 01.02.2010 was executed between the Bank, the Borrower and his wife as co-borrower.

5. Between February, 2010 to July, 2011, the Bank disbursed the sum of Rs.1,68,80,531/- (Rupees One Crore Sixty Eight Lakh Eighty Thousand Five Hundred Thirty One only) to the Builder in thirteen tranches. Thus, the Builder received

about 95% of the sale consideration from the Borrower as well as the Bank.

6. Despite having received a substantial amount, there was a delay in delivery of the possession of the apartment. On 04.08.2011, the Builder informed the Borrower that there was delay and that possession of the apartment would be handed over by April, 2012. However, the Builder failed to deliver the possession even by April, 2012 and between October and December, 2012 called upon the Borrower to take the possession for "fit-outs". The Borrower did not accord his consent to the aforesaid proposal and inquired whether the Occupancy Certificate and the No-Objection Certificate (NOC) of the Fire Department had been obtained. The Builder by communication dated 25.03.2013, informed the Borrower that NOC of the Fire Department was still awaited, which according to the Builder was issued in May, 2013.

7. In the meantime, the Bank started debiting pre-EMI interest on the amount disbursed by it. As per the loan statement dated 23.03.2013, interest of Rs.41,34,940/- (Rupees Forty One Lakh Thirty Four Thousand Nine Hundred Forty only)

had been debited to the loan account, out of which the Borrower paid a sum of Rs.26,23,150/- (Rupees Twenty Six Lakh Twenty Three Thousand One Hundred Fifty only) to the Bank.

8. On 13.05.2013, the Borrower filed a consumer complaint, namely, CC No. 150 of 2013, before the Commission seeking refund of Rs.2,19,92,107/- (Rupees Two Crore Nineteen Lakh Ninety Two Thousand One Hundred Seven only) with interest at the rate of 12% *per annum* compounded quarterly till the date of the complaint, and interest at the rate of 18% *per annum* thereafter, as well as reimbursement of house rent of Rs.7,97,895/- (Rupees Seven Lakh Ninety Seven Thousand Eight Hundred Ninety Five only) for the period from 01.07.2011 till 30.04.2013 and further rent thereafter. The Borrower also prayed for reversal of the interest debited to his loan account, for a direction that the sum of Rs.26,23,150/- (Rupees Twenty Six Lakh Twenty Three Thousand One Hundred Fifty only) collected by the Bank as interest be treated as repayment towards the principal amount, and for a sum of Rs.15,00,000/- (Rupees Fifteen Lakh only) as

compensation from the Builder and the Bank for mental trauma, agony and harassment.

9. During the pendency of the complaint, the Bank recalled the loan by notice dated 19.01.2015 and filed a suit, namely, COS No. 96 of 2017 before the Commercial Court seeking recovery of a sum of Rs. 2,51,15,774/- (Rupees Two Crore Fifty One Lakh Fifteen Thousand Seven Hundred Seventy Four only) along with interest at the rate of 18% *per annum* from the Borrower and his wife. During the pendency of the complaint as well as the suit, the Borrower paid a further sum of Rs. 20,00,000/- (Rupees Twenty Lakh only) and 30,00,000/- (Rupees Thirty Lakh only) to the Bank on 23.06.2021 and 14.07.2021 respectively. Thus, the Borrower in all paid Rs. 76,23,150/- (Rupees Seventy Six Lakh Twenty Three Thousand One Hundred Fifty only) to the Bank.

THE ORDER OF THE COMMISSION

10. The Commission by its order dated 01.07.2022, *inter alia* held that the Borrower is a consumer and that there was a delay in delivery of possession of the apartment, for which the Borrower is entitled to refund of the principal amount along with reasonable interest. The Commission rejected the plea

of *force majeure* raised by the Builder, holding that the Builder had merely narrated events and obstacles routinely faced by developers, had not intimated the Borrower of any *force majeure* condition at the relevant time, and had failed to show that the occupancy certificate had been received. The Commission noticed that under Recital (H) of the tripartite agreement and Clause 2.4 of the Loan Agreement, the Bank was to disburse the loan after verifying the progress of construction. The Commission held that the Bank did not adduce any evidence of such verification, found the Bank to be deficient in service, and directed the Bank to pay a sum of Rs.2,00,000/- (Rupees Two Lakh only) to the Borrower. The Commission further directed the Builder to refund the entire amount deposited by the Borrower with interest at the rate of 9% *per annum* from the date of the respective deposits till realisation within a period of three months, failing which the Builder was to pay the principal amount with interest at the rate of 12% *per annum*. The Commission, however, did not advert to the claim of the Borrower for reimbursement of house rent and for compensation.

11. Being aggrieved by the direction of the Commission to refund the entire amount to the Borrower, the Bank preferred a review petition which was dismissed vide order dated 07.12.2022 by the Commission.

12. The Builder did not challenge the order of the Commission and sought leave to deposit the amount due under it. On 01.02.2023, the Commission permitted the Builder to deposit a sum of Rs.4,43,24,510/- (Rupees Four Crore Forty Three Lakh Twenty Four Thousand Five Hundred Ten only) without prejudice to the rights and contentions of the parties. The said amount was deposited by the Builder. The amount so deposited, together with the interest accrued thereon, stood at Rs.5,65,43,411/- (Rupees Five Crore Sixty Five Lakh Forty Three Thousand Four Hundred Eleven only) as on 08.10.2026.

13. On 10.12.2024, the Commercial Court dismissed the suit filed by the Bank on the ground that in view of findings recorded by the Commission in Consumer Complaint, the suit was not maintainable. However, the Commercial Court did not answer the remaining issues in the suit. Being

aggrieved, the Bank has filed an appeal which is pending before the High Court.

14. By an order dated 07.11.2025, this Court declined to grant interim relief to the Bank, but directed that the disbursal of the amounts would be subject to the final outcome of the appeals. By a subsequent order dated 22.05.2026, this Court permitted the Borrower to withdraw 50% of the amount deposited by the Builder before the Commission on furnishing a bank guarantee to the satisfaction of the Commission.

15. Being aggrieved by the denial of the claim for house rent and compensation, and by the rate of interest, the Borrower has filed the Civil Appeal No. 8994 of 2022. Being aggrieved by the finding recorded by the Commission with regard to deficiency of service on the part of the Bank and the consequential direction to pay a sum of Rs. 2,00,000/- (Rupees Two Lakh only) as well as the direction to refund the entire amount along with interest to the Borrower, the Bank has filed the Civil Appeal Nos. 4622-4623. The Bank has also challenged the order dated 07.12.2022 by which its review petition was rejected.

SUBMISSIONS

16. Mr. Amit Anand Tiwari, learned senior counsel for the Borrower, submitted that the loan was to be disbursed as per the schedule and in step with the construction and the Bank while disbursing the amount of loan failed to adhere to the schedule. It was contended that about 80% of the amount was disbursed at a time when the Builder did not even have permission to construct and the project was joint venture of the Bank and the Builder and they have acted in collusion. It was urged that the Borrower was entitled to rent for a period from 30.06.2011 to 01.07.2022 as well as compensation and the aforesaid prayers of the Borrower were not even adverted to by the Commission. It was also urged that the Borrower is entitled to 18% interest on the amount due to him. It was argued that the Borrower is entitled to refund of the entire amount including the amount paid by the Bank on his behalf and he shall pay the amount to the Bank in case the Bank succeeds in its appeal pending before the High Court. It was urged that the appeal filed by the Bank is barred by *res judicata* as the suit filed by the Bank was dismissed. Our attention was also invited to the averments in the rejoinder

affidavit filed by the Borrower before this Court wherein a claim had been made for payment of rent at the rate of Rs. 38000/- (Rupees Thirty Eight Thousand only) per month from July 2011 to July 2013 and at the rate of Rs. 65000/- (Rupees Sixty Five Thousand only) per month from August 2013 to October 2022. It was also pointed out that the Borrower had incurred litigation expenses of Rs. 35,00,000/- (Rupees Thirty Five Lakh only) and the Borrower was entitled to the payment of said amounts. In support of the aforesaid submissions, reliance has been placed on a decision of this Court[1].

17. Mr. Gaurav Agarwal, learned senior counsel and Mr. Rahul Kripalani learned counsel for the Builder, submitted that Builder has accepted the order passed by the Commission and with a view to bring quietus to the dispute has submitted that out of the amount deposited by the Builder, the amount of Rs.1.27 Crores which was paid by the Borrower from his own pocket be refunded to the Borrower along with such rate of interest, as this Court may deem fit. It was further submitted that the remaining amount with interest accrued

[1] **Rajnesh Sharma** v. **Business Park Town Planners Ltd., 2025 SCC OnLine SC 2061**

thereon be paid to the Bank so that the present appeals as well as the first appeal filed by the Bank pending before the High Court can be disposed of. Alternatively, learned senior counsel has supported the order passed by the Commission and has submitted that the Borrower is entitled to 9% interest which has rightly been awarded to him. It was pointed out that the Borrower in his letter dated 03.11.2012 had himself quantified the loss in terms of rent which the apartment could have fetched, and the Borrower stands adequately compensated by the award of interest. In support of the aforesaid submissions, reliance has been placed on the decisions of this Court[2].

18. Ms. Suhasini Sen, learned counsel for the Bank, submitted that the Commission erred in granting refund of the entire amount of Rs.2.19 Crores to the Borrower in violation of Clauses 16 and 17 of the Tripartite Agreement. It was contended that by cancellation of allotment, the Bank which was a secured creditor had been reduced to the position of an unsecured creditor. It was urged that the finding recorded by the Commission that there was deficiency on the part of the

[2] **Experion Developers (P) Ltd.** v. **Sushma Ashok Shiroor, (2022) 15 SCC 286** and **DLF Homes Panchkula (P) Ltd.** v. **D.S. Dhanda, (2020) 16 SCC 318**

Bank cannot be sustained on the basis of material placed on record. However, it was submitted that the proposal made by the Builder for amicable settlement of dispute was not acceptable to the Bank. It was contended that the suit was dismissed solely on the ground of maintainability and there had been no adjudication on merits and an appeal against the said judgment of the Commercial Court is pending, therefore, the doctrine of *res judicata* has no application. Lastly, it was contended that the rights of the Bank to recover the amount from the Borrower cannot be adjudicated in a complaint filed by a consumer.

ISSUES

19. We have considered the rival submissions and have perused the record.

20. The issues which arise for consideration are as follows:-

(a) whether the Borrower is entitled to refund of the entire amount including the amount disbursed by the Bank, and if so, at what rate of interest?

(b) whether the Borrower is entitled to compensation, including reimbursement of the rent claimed by him?

(c) whether the Bank was deficient in rendering service to the Borrower?

(d) the relief to which the Bank is entitled to in these proceedings.

21. Now, we proceed to deal with the issues *ad seriatim.*

ANALYSIS

(a) WHETHER THE BORROWER IS ENTITLED TO REFUND OF THE ENTIRE AMOUNT INCLUDING THE AMOUNT DEPOSITED BY THE BANK, IF SO, AT WHAT RATE OF INTEREST?

22. The entitlement of the Borrower to refund of the entire amount is required to be examined on the touchstone of the principle that no one shall be enriched at the expense of another. The principle is of ancient origin and finds expression in the maxim *nemo debet locupletari ex aliena jactura*, that is, no one ought to be enriched by the loss of another.

23. In India, the principle has a statutory home. Chapter V of the Indian Contract Act, 1872 (the Contract Act), comprising Sections 68 to 72, deals with "certain relations resembling those created by contract". Section 70 of the Contract Act obliges a person who enjoys the benefit of a lawful, non-gratuitous act of another to compensate him. Section 72

mandates that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. Sections 64 and 65 require a benefit received under a contract which is rescinded, or which becomes void, to be restored to the person from whom it was received.

24. The elements of the Doctrine of Unjust Enrichment were identified by this Court in ***Mahabir Kishore*** *v.* ***State of Madhya Pradesh***[3], and it was held that the doctrine proceeds on the basis that it would be unjust to allow one person to retain a benefit received at the expense of another. Stated simply, 'unjust enrichment' means retention of a benefit by a person that is unjust or inequitable[4]. It has also been described as "the unjust retention of a benefit to the loss of another"[5]. A Bench of nine Judges of this Court applied the doctrine to claims for refund of duties and held that a claimant who has passed on the burden of a duty to others cannot recover it for himself, for he has suffered no loss[6].

25. Three things follow. First, the doctrine is part of our law, both by statute and as a principle of equity. Second, it looks at the

[3] **(1989) 4 SCC 1**
[4] **Sahakari Khand Udyog Mandal Ltd.** v. **Commissioner of Central Excise, (2005) 3 SCC 738**
[5] **Indian Council for Enviro-Legal Action** v. **Union of India, (2011) 8 SCC 161**
[6] **Mafatlal Industries Ltd.** v. **Union of India, (1997) 5 SCC 536**

person who holds a benefit and asks whether, in conscience, he may keep it. Third, it is a doctrine of correction and not of reward. Restitution restores. It does not redistribute. It returns value to the person at whose expense it was received. It does not confer value on a person merely because he has been wronged.

26. The law of contract compensates, it does not enrich. Even while enhancing the rate of interest payable to a buyer, this Court in ***Rajnesh Sharma*** (supra) cautioned that the objective of granting compensation cannot be altered such that it amounts to a windfall gain to the other party.

27. In the backdrop of the aforesaid well-settled legal principles, we advert to the facts of the case in hand. The transaction is triangular. The Builder received Rs.2,19,92,107/- (Rupees Two Crore Nineteen Lakh Ninety Two Thousand One Hundred Seven only) and gave nothing in return. The retention of that amount by the Builder is plainly unjust, and the Builder has rightly not disputed its liability to refund it. The real question is to whom the refund must go. The money came from two sources. Admittedly, the Borrower paid a sum of Rs.51,11,576/- (Rupees Fifty One Lakh Eleven Thousand

Five Hundred Seventy Six only) to the Builder from his own funds. He also paid a sum of Rs.76,23,150/- (Rupees Seventy Six Lakh Twenty Three Thousand One Hundred Fifty only) to the Bank, comprising Rs.26,23,150/- (Rupees Twenty Six Lakh Twenty Three Thousand One Hundred Fifty only) paid towards interest up to March, 2013, Rs.20,00,000/- (Rupees Twenty Lakh only) paid on 23.06.2021 and Rs.30,00,000/- (Rupees Thirty Lakh only) paid on 14.07.2021. Thus, the Borrower paid a total sum of Rs.1,27,34,726/- (Rupees One Crore Twenty Seven Lakh Thirty Four Thousand Seven Hundred Twenty Six only) out of his own pocket. The remaining amount was paid by the Bank to the Builder out of the loan, and has not been repaid by the Borrower.

28. It is true that under Recital (H) and Clause 4 of the Tripartite Agreement, a disbursal to the Builder is deemed to be a disbursal to the Borrower. That fiction, however, serves a limited purpose. It fastens the obligation to repay the loan on the Borrower, though the money never passed through his hands. It does not convert borrowed money, which remains unpaid, into the Borrower's own money. The Commission nevertheless directed refund of Rs.2,19,92,107/- (Rupees

Two Crore Nineteen Lakh Ninety Two Thousand One Hundred Seven only) to the Borrower along with interest, without any reference to the lender whose money it largely was. Payment of the entire amount to the Borrower, while the loan remains outstanding and the claim of the Bank is in dispute, would place in his hands a sum which he has not paid. It amounts to unjust enrichment, which is impermissible in law. We, therefore, hold that the Borrower is entitled, in his own right, to refund of a sum of Rs.1,27,34,726/- (Rupees One Crore Twenty Seven Lakh Thirty Four Thousand Seven Hundred Twenty Six only).

29. Now we examine the claim of the Borrower for interest. The relevant extract of Clause 24 of the Agreement for Sale dated 21.10.2009 reads as under: -

> "**24.** The Builder/Promoter shall give possession of the said Residential Apartment to the purchaser on or before 30th day of June, 2011. The Builder/Promoter shall be entitled to a grace period of 6 months if he fails or neglects to give possession of the said Residential Apartment to the Purchaser on or before the date aforesaid on account of reasons beyond its control. In the event, the Builder/Promoter fails to handover the possession of the Residential Apartment to the Purchaser beyond the said grace period

> of 6 months, then and in that event, the Builder/Promoter shall, on demand, be liable to refund to the Purchaser the compensation calculated at the rate of 12 percent per annum on the amounts paid by the Purchaser from the date of expiry of such grace period of 6 months … Alternatively, on such expiry of the said grace period of 6 months, the Purchaser may by giving notice in writing to the builder elect to terminate this Agreement and in such event, the Builder/Promoter shall on demand be liable to refund to the Purchaser the amounts already received by the Builder/Promoter in respect of the said premises with simple interest at 12 percent per annum from the date the Builder/Promoter received such demand till the date of refund. …"

30. Thus, by Clause 24 of the Agreement for Sale, the parties themselves have fixed the rate of interest at 12% *per annum*. Clause 24 of the Agreement for Sale provides that the Builder must pay compensation at the rate of 12% *per annum* in case it fails to deliver the apartment in time, and that in case the purchaser terminates the agreement, the Builder must refund the amount to the purchaser with simple interest at the rate of 12% *per annum*. The Borrower himself, in his complaint, claimed interest at the rate of 12% *per annum* up to the date of the complaint. The claim of the Borrower for interest at the rate of 18% *per annum*, founded on Clause 19

of the Agreement for Sale and on the decision in ***Rajnesh Sharma*** (supra), is of no assistance to him. Clause 19 does not stand alone; Clause 24 stands beside it and specifically governs the consequence of the Builder's default. In ***Rajnesh Sharma*** (supra), this Court enhanced the rate of interest from 9% to 18% in view of the conduct of the builder, who had kept the buyer waiting for over a decade and had charged him interest at 18% for delayed payments. This Court, however, made it clear that what is reasonable varies from case to case, and that the rate of interest charged by the builder cannot be granted to the buyer as a rule of thumb. This Court has also held that interest at 18% cannot be awarded as a uniform rule, and that the relief must depend on the facts of each case[7]. Where the parties have agreed upon a particular consequence of delay in handing over possession, require strong reasons to depart from it[8].

31. For the aforementioned reasons, and especially in view of Clause 24 of the Agreement for Sale, the Borrower is entitled

[7] **Ghaziabad Development Authority** v. **Balbir Singh**, **(2004) 5 SCC 65**
[8] **DLF Homes Panchkula Pvt. Ltd.** v. **D.S. Dhanda**, **(2020) 16 SCC 318** and **Greater Mohali Area Development Authority** v. **Anupam Garg**, **2025 SCC OnLine SC 1312**

to simple interest at the rate of 12% *per annum*. The interest shall run from the date of each payment.

32. Accordingly, issue (a) is answered by stating that the Borrower is entitled to refund of a sum of Rs. 1,27,34,726/- (Rupees One Crore Twenty Seven Lakh Thirty Four Thousand Seven Hundred Twenty Six only), that is the amount deposited by him along with interest at the rate of 12% *per annum* from the date of each deposit till the amount is paid to the Borrower.

(b) **WHETHER THE BORROWER IS ENTITLED TO COMPENSATION, INCLUDING REIMBURSEMENT OF THE RENT CLAIMED BY HIM?**

33. The complaint made by the Borrower was not confined to refund of the amount and interest. The Borrower had sought reimbursement of rent of Rs.7,97,895/- (Rupees Seven Lakh Ninety Seven Thousand Eight Hundred Ninety Five only) for the period from 01.07.2011 to 30.04.2013 and further rent thereafter, and had also claimed a sum of Rs.15,00,000/- (Rupees Fifteen Lakh only) for mental agony and harassment. The Commission reproduced these prayers in its order and even observed that the Borrower was entitled to refund of the amount deposited along with compensation. Yet, the

operative part of its order grants no compensation against the Builder. The prayers were not adverted to at all. The grievance of the Borrower in this regard is, to that extent, well founded.

34. The power to award compensation flows from Section 14(1)(d) read with Section 22 of the Act. In ***Lucknow Development Authority*** *v.* ***M.K. Gupta***[9], this Court explained that the Act enables the consumer to claim, and the forum to award, not only the value of the goods or services but also compensation for the injustice suffered. In ***Ghaziabad Development Authority*** (supra), this Court held that what is awarded under the Act is compensation, that is, a recompense for the loss or injury, and that it "necessarily has to be based on a finding of loss or injury and has to correlate with the amount of loss or injury". The Court illustrated that where possession is not given, the loss may be determined on the basis of the rent which could have been earned, or the rent actually paid by the consumer. In ***Bangalore Development Authority*** *v.* ***Syndicate Bank***[10], this Court held that where possession is not delivered within the stipulated time, the allottee is entitled to refund of the amount paid with reasonable interest

[9] **(1994) 1 SCC 243**
[10] **(2007) 6 SCC 711**

from the date of payment, and may in addition be entitled to compensation, as may be decided with reference to the facts of each case. The power, however, is to award compensation for loss or injury suffered by the consumer due to the negligence of the opposite party. It is a power to compensate for a loss which is proved and which flows from the default. It is not a power to award every expense which the consumer has incurred during the pendency of the dispute. Damages for contractual breach are generally compensatory; an award which surpasses actual loss enters the domain of a gain-based remedy, and the court must take a balanced approach so as to ensure right compensation.[11]

35. Before this Court, the claim for rent has grown far beyond what was initially claimed before the Commission. In the rejoinder affidavit, for the first time, the rent at Rs.38,000/- (Rupees Thirty Eight Thousand only) per month from July, 2011 to July, 2013, and the rent at Rs.65,000/- (Rupees Sixty Five Thousand only) per month from August, 2013 to October, 2022 has been claimed. The aforesaid sum cannot be permitted to be claimed for the first time in these Civil

[11] **Fortune Infrastructure** v. **Trevor D'lima, (2018) 5 SCC 442**

Appeals. For the reasons which follow, we are not persuaded to compensate the Borrower for the rent so claimed.

36. Firstly, the Act has no provision corresponding to provisions in other branches of law, such as Rent Control legislations which statutorily recognises the right of a tenant to claim rent, in case he hands over the possession of the tenanted premises for reconstruction/rebuilding.

37. Secondly, the award of rent in addition to interest on the full refund would amount to double compensation for the same default. Interest at 12% *per annum* is awarded precisely because the Borrower was deprived of the use of his money. Had that money been with him, he could have applied it to secure a home of his own. In ***D.S. Dhanda*** (supra), this Court, relying on ***Irrigation Department, Government of Orissa*** *v.* ***G.C. Roy,***[12], held that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for that deprivation, which may be called interest, compensation or damages; that "such interest will take into its ambit, the consequences of delay in not handing over his possession"; and that an award "under various heads

[12] **(1992) 1 SCC 508**

in respect of the same default is not sustainable". The Court further held that the consumer fora "cannot award interest and/or compensation by applying rule of thumb". To award him both, the return on the money which would have bought him a home and the rent which he paid for want of one would be to compensate him twice for the same loss.

38. Thirdly, the claim travels beyond the pleadings and the proof. The complaint quantified the rent at Rs.7,97,895/- (Rupees Seven Lakh Ninety Seven Thousand Eight Hundred Ninety Five only) for the period up to 30.04.2013. The figures for the subsequent period, running into several lakhs every year, are stated for the first time in a rejoinder affidavit in this Court, supported only by a bank statement for the year 2021. No lease deed, rent receipt or other evidence of the tenancy was placed before the Commission. A claim of this magnitude cannot be adjudicated in a statutory appeal on the strength of averments made in a rejoinder.

39. Fourthly, and more fundamentally, the Borrower elected his remedy. Clause 24 of the Agreement for Sale provides two alternative remedies upon the Builder's failure to deliver possession. The purchaser may stay in the project and

receive compensation at the rate of 12% *per annum* till possession is handed over; or he may terminate the agreement and receive a refund of the amount paid with simple interest at the rate of 12% *per annum*. By filing the complaint on 13.05.2013 and seeking a refund, the Borrower chose the second course. Having chosen to give up the apartment, he cannot claim, in addition, the rent which he would have saved had he taken possession of it. From the date of that election, the cost of housing himself is not a loss caused by the non-delivery of an apartment which he no longer wished to have. It is a cost which every person must bear, whether he owns a home or rents one. The obligation of the Builder thereafter was to return his money with interest, and that obligation is being enforced.

40. Lastly, the claim is inconsistent with the Borrower's own case. By his letter dated 03.11.2012, the Borrower quantified his loss as the rent which he could have earned by letting out the apartment, at about Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) per month. The same apartment, for the same period, cannot be the source both of rent which the Borrower would have received and of rent which he was

compelled to pay. Further, the Borrower has stated that he resided in rented premises until he purchased another apartment. Under Section 73 of the Contract Act, compensation is payable for loss which naturally arose in the usual course of things from the breach, and, by the Explanation to that Section, the means which existed of remedying the inconvenience caused by the non-performance must be taken into account. A purchaser who has elected to take his money back, and who has the benefit of interest on it, cannot claim rent indefinitely thereafter.

41. The claim of compensation quantified by the Borrower himself in the consumer complaint filed on 13.05.2013 was Rs. 7,97,895/- (Rupees Seven Lakh Ninety Seven Thousand Eight Hundred Ninety Five only). The Borrower has been subjected to prolonged uncertainty, having paid about 95% of the consideration by July 2011 and having been kept out of both the apartment and his money for over fifteen years. The Borrower has been deprived of the benefit of escalation in the price of the apartment and therefore, compensation, in such a case has to be higher than the return of the money deposited by the Borrower. The quantum of compensation

depends on the facts of each case. Having regard to the totality of circumstances and in order to avoid prolonged inquiry, at this distance of time, we deem it appropriate to award a sum of Rs. 15,00,000/- (Rupees Fifteen Lakh only) to the Borrower as compensation. The said amount shall be towards full and final satisfaction of all the claims of the Borrower against the Builder towards rent, mental agony, harassment and litigation expenses. Issue (b) is answered accordingly.

(c) **WHETHER THE BANK WAS DEFICIENT IN RENDERING SERVICE TO THE BORROWER?**

42. Section 2(1)(g) of the Act defines "deficiency" as any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained under any law, or which has been undertaken to be performed in pursuance of a contract or otherwise, in relation to any service. Deficiency is a matter of proof. The burden of proving it lies on the person who alleges it[13]**.** This Court has reiterated that the initial burden of proving deficiency in service is on the complainant, and that the

[13] **Ravneet Singh Bagga** v. **KLM Royal Dutch Airlines, (2000) 1 SCC 66**

burden shifts to the opposite party only when that initial burden is discharged.[14]

43. The Borrower discharged his initial burden. He repeatedly asked the Bank to verify the progress of construction. By e-mail dated 21.03.2010, he sought the Bank's own assessment of the construction activity. On 24.05.2011, he told the Builder that the progress made did not justify further payment; yet the last tranche was released in July, 2011. By a letter dated 22.06.2012 and e-mails dated 29.10.2012 and 30.10.2012, he sought its inspection reports and an inspection by a third party. By 30.06.2011, when possession was due, the Builder had received about 95% of the consideration. Yet on 30.10.2012 the Bank itself reported the building to be only 90% ready, and the fire no-objection certificate came to be issued only in May, 2013. The burden then shifted to the Bank. Whether it verified the progress of construction before each disbursal was a fact especially within its knowledge. Although the Bank claimed, by its reply dated 02.05.2012, that its engineers had inspected the site before each release, it produced no inspection report before

[14] **SGS (India) Ltd.** v. **Dolphin International Ltd., (2022) 19 SCC 442**

the Commission. Its written version was not taken on record, and it led no evidence. Its witness in the suit stated that such reports were not required. The fact that the thirteen tranches matched the stage-wise instalments in Clause 6 of the Agreement for Sale, or that the Borrower forwarded the Builder's demands, indicates only that the Bank paid what was demanded. It does not show that the Bank verified the stage of construction, as its own letter of sanction obliged it to do.

44. The finding of deficiency recorded by the Commission is thus a finding of fact founded on the material on record. It is neither perverse nor based on no evidence. The compensation of Rs.2,00,000/- (Rupees Two Lakh only) awarded against the Bank is modest and commensurate with the deficiency. We find no ground to interfere with it, either at the instance of the Bank or at the instance of the Borrower. The finding of deficiency and the direction to the Bank to pay Rs.2,00,000/- (Rupees Two Lakh only) to the Borrower are accordingly upheld. Accordingly, issue (c) is answered.

(d) **THE RELIEF TO WHICH THE BANK IS ENTITLED TO IN THESE PROCEEDINGS**

45. These proceedings arise out of consumer complaint in which the claim of the Bank based on tripartite agreement cannot be examined. The Bank is entitled to recover the sum lawfully due to it from the Borrower. It is noteworthy that the Bank has already initiated proceedings for recovery of the amount due to it by filing a suit before the Commercial Court, which was dismissed, and its claim is now pending in appeal before the High Court. We, therefore, cannot examine the claim of the Bank in these proceedings; it is required to be adjudicated in the appeal pending before the High Court. The High Court shall decide the appeal on its own merits. All contentions of the Bank and the Borrower, including the contention of the Borrower regarding his liability under the loan, are left open.

46. Now, we deal with I.A. No. 95385 of 2026, by which Borrower seeks amendment of the cause title and the memo of parties. The Borrower not only seeks change of his name but also seeks to bring on record the present names of the respondents. The description of the respondents as proposed by the Borrower has been opposed by the respondents. We are, therefore, not inclined to permit to change the description of respondents. However, from the document

annexed with the application, we are satisfied that the name of the appellant has been changed from K. Madhusudhan Rao to Madhu Kudapa. The application is, therefore, allowed to the limited extent of permitting the Borrower to change his name in the cause title and the memo of parties. Accordingly, I.A. No. 95385 of 2026 is disposed of.

CONCLUSION AND DIRECTIONS

47. For the foregoing reasons, the following directions are issued:-

(i) The Commission shall release to the Borrower, a sum of Rs.1,27,34,726/- (Rupees One Crore Twenty Seven Lakh Thirty Four Thousand Seven Hundred Twenty Six only) along with interest at the rate of 12% *per annum* from the date of respective deposits made by the Borrower to the Builder and the Bank till the date of payment.

(ii) The Commission shall release a further sum of Rs.15,00,000/- (Rupees Fifteen Lakh only) to the Borrower as compensation out of the said deposit, within a period of one month from today.

(iii) The remaining amount shall be kept by the Commission in an interest bearing account which shall abide by the decision of the appeal filed by the Bank.

(iv) The High Court shall decide the appeal pending before it without being influenced by any of the observations made herein, on its own merits.

48. The order of the Commission is modified accordingly. The Appeals are disposed of accordingly. There shall be no order as to costs.

49. Pending application(s), if any, shall stand disposed of.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ALOK ARADHE]

NEW DELHI;
OCTOBER 15, 2026.