

IN THE HIGH COURT OF FIJI
CIVIL JURISDICTION AT SUVA

Civil Action No. 265 of 2018

BETWEEN: **PRATIMA DEVI GAJRAJ** alias **PRATIMA DEVI SINGH** of
Tamavua Hospital Compound, Suva, Fiji, Doctor.

PLAINTIFF

AND: **SUDESH NADAN GOUNDAR T/A PERFECT BUILDERS** of Lot
18, Ratu Dovi Road, Laucala Beach Estate, Nasinu, Building
Contractor.

DEFENDANT

Counsel: Mr. R. Naidu for the Plaintiff
 Mr A. Nand for the Defendant

Date of Judgment: 30.9.2025

JUDGMENT

INTRODUCTION

- [1] This matter arises from a building contract entered into on 1 .7. 2017 (The Contract) between the Plaintiff, and proprietor of Lot 7, Uduya Point Road, Lami, and the Defendant, a building contractor trading as Perfect Builders.
- [2] Under the contract, the Defendant undertook to complete the construction of a three-unit apartment, including taking over partially completed works, for a sum of FJ\$520,000. Of this, \$120,000 was reserved for the Plaintiff's direct purchase of fittings and solar system, leaving \$400,000 payable to the Defendant in scheduled to seven phases. The construction assigned to Defendant was housing for the Plaintiff and two apartments on Uduya Point with birthing facility (The Project). It had detailed building plan marked P8
- [3] So the Project was partly recreational cum commercial and funded partially by Plaintiff's superannuation account balance and rest was funded by a commercial bank.

- [4] Defendant who was a supplier to previous contractor knew about the project prior to the Contract and had stated he could complete the remaining work within eight months for the sum he had suggested.
- [5] According to the Contract the Project was to be completed within eight months, subject to favourable weather and availability of material.
- [6] During the contract period, the Plaintiff made payments totalling \$153,066.00, including \$58,200 as an initial payment (or '*Deposit*'), and \$84,584 was paid after completion of phase one out of seven phases stated in the contract.
- [7] Defendant failed to complete the project within time, after several meetings and also reminders and messages. Plaintiff was severely frustrated with the manner in which Defendant even had refused to answer to her messages and slowing down of the work and little progress or no progress at all for several months. The time period of the project had lapsed with only fully completion of first Phase partial completion of second, and Defendant sought even further extension of the time, which was rightfully refused by Plaintiff.
- [8] Plaintiff had obtained a quantity surveyor's report of the cost of the work Defendant conducted before engaging another contractor to complete the work. This proved actual cost of work compiled.
- [9] Plaintiff produced evidence of remedial work require due to poor workmanship of the work of Defendant. Plaintiff alleged that Defendant performed defective and substandard works, and abandoned the site. She therefore hired other contractors to complete the project.
- [10] Plaintiff seeks restitution of overpayments, costs of remedial works, damages for loss of rental income, general damages for stress and inconvenience, and interest.
- [11] The Defendant denies liability, contends that delay was due to variations and adverse weather, he also stated that Plaintiff did not pay for the work completed by him. He agreed that he did not complete fully other than first Phase but state he had completed second Phase substantially. This was denied and proved wrong at hearing.
- [12] He also states that his request for extension of the Contract time was unreasonably refused. He counterclaimed for the alleged sums due for the work he did on the Project and also stated his request for extension of time upon expiration of the Contract was refused and this was the reason for failure to complete the Project. He also claimed for breach of contract and also seeks liquidated damages for it. There is no clause to claim liquidated damages for Defendant, though there was a clause to seek liquidated damages for Plaintiff, for delay.

[13] Plaintiff is not seeking liquidated damages under the Contract.

FACTS

[14] Most of the material facts agreed and they are,

- “1. **THE** Plaintiff is a doctor by Profession.
2. **THE** Plaintiff is the registered proprietor of all that land comprised and described in Certificate of Title No: 35536 being Lot 7 on DP 6340 situated at Uduya Point Road, Lami.
3. **THE** defendant is a building contractor and operates his business under the name and style of Perfect Builders from Lot 18, Ratu Dovi Road, Laucala Beach Estate, Nasinu.
4. **BY** a contract in writing dated 1st July 2017 made between the plaintiff and the defendant, the defendant agreed, subject to the terms therein appearing, to take over construction of a partially constructed apartment and fully complete and build a 3 unit apartment (hereinafter referred to as “the apartment”) for the plaintiff at Lot 7, Uduya Point Road, Lami for the sum of \$520,000.00 in accordance with certain plans and specifications.
5. **THE** said contract provided for a sum of \$120,000.00 from the said sum of \$520,000.00 to be used by the plaintiff for the purchase of all fittings and solar system for the said apartment.
6. **BY** the terms of the said contract the plaintiff covenanted to pay the defendant the sum of \$400,000.00 in the follow manner:

7.

Phases	Amount (\$)
Deposit	60,000.00
1	75,000.00
2	56,000.00
3	50,000.00
4	30,000.00
5	73,000.00
6	41,000.00
7	15,000.00
Total	400,000.00

DURING the

contract period the plaintiff was making prepayments to the defendant. The plaintiff has paid the defendant the sum of \$153,066.00.

Particulars

<i>Date</i>	<i>Sum paid</i>
03/07/2017	\$58,200.00 (phase 1 payment)
01/08/2017	\$10,282.00 (for roof variation from timber to steel structure)
24/08/2017	\$84,584.00 (phase 2 payment and for additional roof variation and construction of jetty and extension of garage)

8. **IT** was a term and condition of the said contract above mentioned that the defendant would complete the construction of the said apartment within 8 months commencing 1st July 2017, subject to favourable weather and availability of materials.
9. **THE** said contract provided for the defendant to carry out and complete the construction work in 7 phases, details are as follows:

Phase 1

1. Remove rust by rustproof coatings to the existing steel before pouring.
2. Concrete filling for the first floor.
3. Block walls for proposed first floor.
4. Form work and steel fixing for the beams.
5. Council and engineers inspection with report.
6. Complete beam filling.

Phase 2

1. Roof framing works.
2. Brackets and fasteners as per plans and specification.
3. Roof covering with approved colour bond cladding as per plans and engineers specification.
4. Roof plumbing (ridge cap, flushing and guttering).

Phase 3

1. Door and window frames.
2. Electrical fittings.
3. Plaster works.

Phase 4

1. All railings exterior and interior, including Timber deck for Unit 1 and stairs for all Units.
2. Sanitary fittings.

3. *Waste pipe and water connection.*
4. *Storm water.*
5. *Down pipe and sewage connection.*

Phase 5

1. *Ceilings complete top and bottoms.*
2. *Jib finishing works.*
3. *Painting entire building*
4. *Tilling where necessary*
5. *Water fittings*
6. *Electrical fittings*
7. *All fence and gate works complete*

Phase 6

1. *Joinery works (mahogany and vesi timber)*
2. *Built ins cabinet*
3. *Study table*
4. *Vanity cabinet*
5. *Kitchen*
6. *All kitchen*
7. *Bure as per plans with Table and Benches*

Phase 7

1. *Garage, footpath, driveway*
2. *Fence covering as per plans*
3. *Landscaping and site clear and clean up*
4. *Exterior and interior touch up works*

10. ***THE** defendant had also agreed to do some additional work which was the construction of a jetty and extension of garage.*

11. ***THERE** were implied terms of the contract as follows:*

- (1) *that the defendant would carry out and complete the work with reasonable care and skill;*
- (2) *that the defendant would carry out and complete such work in a proper and skillful manner and would use qualified workers;*
- (3) *that the defendant would carry out and complete the construction in a timely manner;*
- (4) *that the defendant would complete the work and handover the apartment to the plaintiff within time;*
- (5) *that the works as completed would be fit for human habitation.*

12. ***THE** said contract also provided interalia the following terms:*

- a) *If the Defendant fails to complete the work in the given time, in that event, the contractor shall in writing give the reasons and delays in work and apply for the grace period.*
 - b) *The Plaintiff shall write to the Defendant for any variations or changes to the Plaintiffs building and shall be payable for extra works done.*
13. **FURTHER** *or in the further alternative, the defendant owed a duty of care to the plaintiff in carrying out the works to see that the work he took on was carried out and completed with reasonable care and skill, done in a workmanship like manner so that, as regards that work, the apartment would be completed on time and when completed would be fit for human habitation.*
 14. **THE** *defendant carried out some construction work at Lot 7, Uduya Point Road, Lami between 1st July 2017 and 28th February 2018.*
 15. **THE** *defendant did not complete the construction of the apartment within 8 months.*
 16. **THE** *defendant made a request to extend the contract but the plaintiff did not extend the contract after it expired on 28th February 2018.*
 17. **THE** *plaintiff hired another contractor to complete the works.*
 18. *On 19th January 2018, the Defendant submitted to the Plaintiff progress report through the Defendant Engineers and also requested for extension of time to complete the pending works but the plaintiff refused to accept the progress report as correct.*
 19. *There was no amended plan done for the variation of the roof structure from timber to steel.”*

[15] The Plaintiff called six witnesses, including herself. Expert witnesses (an engineer and a quantity surveyor) testified to defective workmanship, incomplete works, and rectification requirements. Contractors engaged after termination testified to substantial remedial work required. The Plaintiff herself gave detailed evidence of delays, her correspondence with the Defendant, meetings involving her bank, and her decision not to extend time period of the Contract upon expiration of the Contract on 28.2.2018.

[16] She maintained that Phases 2–7 under the contract were not fully completed and even the work completed was poor, and she incurred substantial further costs to remedy them; incurring additional cost to her.

[17] Plaintiff was also claiming valuation estimated monthly rental of \$8,000 once complete, which she claims was lost due to delay.

- [18] Plaintiff claiming for overpayment on the basis of work completed relying on quantity surveyors report of the work completed by Defendant at the end of the Contract.
- [19] Plaintiff is also claiming for damages for remedial work ((P30) for \$28,000
- [20] Plaintiff is claiming damages for inconvenience, distress, mental stress, discomfort, disappointment and injury (See Watts v Morrow (1991) 1 WLR, 1421 at 1441-144. and also West v Ian Finlay & Associates [2014] EWCA Civ 316 where the sum was assessed for each member of family, mental distress for defective work of house renovation)
- [21] The Defendant called three witnesses. One supplier (DW1) and another contractor (DW2) testified that the Defendant carried out works satisfactorily and purchased services/materials. He stated that delays arose from the Plaintiff's variations (notably the change of roof from timber to steel) and from heavy rainfall. He asserted he had requested extensions of time through his engineer and claimed that 95% of phase 2 and part of phase 3 had been completed. He further claimed the Plaintiff wrongfully refused extensions and terminated prematurely.

Analysis

- [10] The Contract required completion within 8 months, subject only to favourable weather and material availability. It also contained a clause for liquidated damages of \$70 per day in favour of Plaintiff, when there was a delay to complete the Project beyond eight month time period. Plaintiff had not claimed under said provision but has claimed for general damages. Plaintiff can claim for actual damages even if there was a breach due to delay (Triple Point Technology Inc v PTT Public Co Ltd [2022] 3 All ER 601 and Cavendish Square Holding BV v El Makdessi; Parking Eye Ltd v Beavis [2016] 2 All ER 519)
- [11] Plaintiff admitted that there were some variations agreed between the parties on 26.7.2017 for total value of \$26,100.00. This is evidenced from document P14 which is an admitted document issued by Defendant to Plaintiff. It further stated that '*Dure to variations the completion time factor will vary*'. Defendant seemed to rely on this for his inordinate delay.
- [12] The scope of the variations stated in P 14 are as follows;
- a. Roof structure to be changed from timber to steel beams.
 - b. 150 X50 purlins as per Engineers Requirements bolted to steel beams.
 - c. Roof Cladding as per plan
 - d. Extension of one extra garage 6X3 m as per plan for main flat

- e. Front terrace poles to be changed from iron pole to concrete round columns
- f. Extension of toilet at the bulk
- g. Demolish old jetty and refurbish new jetty as per discussion
- h. Canopy over the window at the main flat to be clad with alu panel and assorted frames
- i. Terrace with timber decking at the main flat

- [13] Total cost of variations were estimated at \$26,100 and considering the nature of the variations there cannot be substantial delay in failure to complete beyond first Phase completely despite payments being made for \$153,066 including the full payment for first Phase.
- [14] The evidence of Plaintiff and other witnesses, minutes of the meetings, and correspondence demonstrates persistent delay, abandonment of the site, and poor workmanship. The Defendant had even conceded delays but sought to attribute them to weather and variations. This is again without proof upon the analysis of evidence.
- [15] While some rainfall occurred, as expected due to cyclone season there were no evidence of adverse weather affecting the project to delay for months and or to justify completion of only one Phase of the Contract completely in order to claim for the amount under said Phase.
- [16] Defendant was aware of the usual rainfall during cyclone season and there was no evidence beyond the ordinary rainfall during this time period which was known to the parties.
- [17] It was clear from the messages of Plaintiff marked P27 that there was no evidence to support delay of substantial magnitude due to adverse weather, and it was simply the manner in which Defendant treated Plaintiff who had paid substantial amount upon completion of Phase one.
- [18] Defendant could only complete phase one completely in order for him to claim under that. So Defendant could complete only one Phase, out of seven phases in the Contract.
- [19] Plaintiff's project manager who was employed due to the poor workmanship and delay also confirmed that there were no such special circumstances to delay for a long period. Plaintiff could complete only one phase out of seven under the Contract. This was also after several meetings and coercion from Plaintiff and the bank which provided funding for the project.
- [20] Defendant did not mobilise resources adequately and diverted workers to other projects, this is clearly negligence on the part of Defendant. This shows that Plaintiff had not exercised duty of care towards the completion of the Project.

- [21] Defendant attempts to take refuge about the failure to obtain approval for the variation of roof and this was an afterthought. If that was the issue he could have stated when numerous correspondence marked and also at meetings held with parties to this action and funding Bank.
- [22] The schedule in the Contract provided for a deposit of \$60,000 followed by \$75,000 for first phase. All payments also included a retainer of 3% and accordingly these amounts were deducted.
- [23] Defendant's position that \$58,200 was a deposit, not a payment for first phase is irrelevant for the claims of Plaintiff.
- [24] The time period of the Contract had expired and substantial work remained unattended. Plaintiff had paid \$153,066.00. So the issue is how much worth of work completed by Defendant. For this Plaintiff produced evidence of Quantity Surveyor. Plaintiff is claiming for more work based on D1 where it stated he had completed 95% of Phase 2 and about 70% of phase 3 without details of the work completed . It also state that last phase where clearing of site including exterior and interior touch up work was 90% completed on the Project where according to the same report had not proceeded beyond Phase three!

QUALITY AND COMPLETION OF WORKS

- [25] Quantity Surveyor's evidence (Jona Divavesi) proves only work of \$64,823.66 VIP could be quantified by him as work done by Defendant at the time the Contract expired.
- [26] Defendant had produced a progress report D1 which stated that Plaintiff had completed phase one fully and partial completion of phase two and three.
- [27] According to D1 prepared on 19.1.2018, 95% of second Phase and, 70% of third Phase were completed by Defendant. This cannot be correct considering the scope of the work under said phases.
- [28] Document marked D1, also stated phase 7 which was the final phase was 90% completed. How the final phase which include '*Exterior and Interior touch up work*', *Landscaping and site clear and clear up*, 'can be done when even half of the project was not completed cannot be accepted as correct progress report on the analysis of evidence. Apart form that phase seven also included *Garage, footpath , driveway and fence* and there was no evidence the extent of , completion of each item and to what extend such items were completed.
- [29] In contrary Plaintiff and the witnesses called by her had given the manner Defendant fulfilled the project. Plaintiff had produced numerous correspondences where Defendant had even ignored or failed to respond to her communications which had led her to become frustrated.

- [30] Plaintiff did not accept document marked D1 as correct document. Progress report and on the analysis of evidence D1 prves that it is not correct report so it is rejected.
- [31] Plaintiff had proved that work Defendant completed was worth \$64,823 .66 and the quantity surveyor also gave evidence and produced the Cost Assessment Report he prepared with details of costing marked as P4.. He was cross examined by counsel for Defendant but his evidence remains as to the proof of the work done by Defendant, and the report marked P4 is accepted.
- [32] The Plaintiff is entitled to restitution of sums paid for work not done or done defectively. However, not all sums are refundable; some works were done, albeit poorly. The quantity surveyor's evidence provides a basis for assessment,
- [33] Plaintiff had also produced P30 as quotation for the remedial work marked P30. This is remedial work due to poor workmanship of Defendant for the work he had done. Accordingly for the claim of remedial work is assessed for \$28,000.
- [34] Plaintiff had also claimed rental for the Project from the date of completion. Though a reasonable time period can be allowed. Plaintiff had claimed this amount based on valuation marked P9. The rental value is assessed at \$8000 and this was the price estimated produced for mortgage purpose for the Project.
- [35] The project was to be completed within eight months and Defendant had completed some work accordingly a reasonable time period for completion of the project is allowed and this time period is five months. So the damages for lost rental is capped at \$40,000(\$8000X5)

Damages for Distress for Breach of Contract

- [36] In English law, which is commonly referenced in discussions of contract damages for distress and anxiety, the general rule is that damages for non-pecuniary losses like mental distress, frustration, or anxiety are not recoverable in breach of contract claims. However, there is a well-established exception where the contract's primary purpose is to provide pleasure, relaxation, peace of mind, or freedom from distress such as in holiday contracts or certain property-related agreements.
- [37] Considering the nature of the construction and the location and Plaintiff's desire the Project to be her residence are factors that qualify the exceptions. Award under this head does not need medical evidence: Such damages are

distinct from claims for psychiatric injury (e.g., diagnosable conditions like depression or PTSD), which do require expert medical evidence to prove causation and severity. For general distress and anxiety, however, courts do not require medical reports or proof of physical symptoms such awards can be based on the claimant's testimony about the inconvenience, upset, and disruption suffered.

[38] This exception can apply to residential construction contracts, where the work involves building or renovating a home intended for personal enjoyment or amenity, rather than purely commercial purposes. In such cases, damages for distress and inconvenience (including anxiety) may be awarded if the breach results in physical consequences like prolonged disruption, defective work requiring the occupants to live in substandard conditions, or extended remedial works.

[39] In UK House of Lords decision of *Farley v. Skinner* [2001] 4 All ER 801 damages were awarded for distress caused by a surveyor's failure to report on aircraft noise affecting a property purchase, emphasizing the peace-of-mind aspect. This was granted on the basis of some special circumstance where claimant sought peace of mind and this was denied due to breach of contract by a party. It was held,

“V. Recovery of non-pecuniary damages

16. The examination of the issues can now proceed from a secure foothold. In the law of obligations the rules governing the recovery of compensation necessarily distinguish between different kinds of harm. In tort the requirement of reasonable foreseeability is a sufficient touchstone of liability for causing death or physical injury: it is an inadequate tool for the disposal of claims in respect of psychiatric injury. Tort law approaches compensation for physical damage and pure economic loss differently. In contract law distinctions are made about the kind of harm which resulted from the breach of contract. **The general principle is that compensation is only awarded for financial loss resulting from the breach of contract:** *Livingstone v Rawyards Coal Co* (1880) 5 AppCas 25, 39, per Lord Blackburn. In the words of Bingham LJ in *Watts* as a matter of legal policy "a contract breaker is not in general liable for any distress, frustration, anxiety, displeasure, vexation, tension or aggravation which his breach of contract may cause to the innocent party" (my emphasis). **There are, however, limited exceptions** to this rule. One such exception is damages for pain, suffering and loss of amenities caused to an individual by a breach of contract: see McGregor on Damages, 16th ed, para 96, pp 56-57. It is not material

in the present case. But the two exceptions mentioned by Bingham LJ, namely where the very object of the contract is to provide pleasure (proposition (2)) and recovery for physical inconvenience caused by the breach (proposition (3)), are pertinent. The scope of these exceptions is in issue in the present case. It is, however, correct, as counsel for the surveyor submitted, that the entitlement to damages for mental distress caused by a breach of contract is not established by mere foreseeability: **the right to recovery is dependent on the case falling fairly within the principles governing the special exceptions.** So far there is no real disagreement between the parties” (emphasis added)

[40] So the issue is whether Defendant’s breach fell under the exceptions In Farley (supra) it was further held the special circumstances that allows damages for mental distress and stated,

“19. The broader legal context of Watts v Morrow [1991] 1 WLR 1421 must be borne in mind. The exceptional category of cases where the very object of a contract is to provide pleasure, relaxation, peace of mind or freedom from molestation is not the product of Victorian contract theory but the result of evolutionary developments in case law from the 1970s. Several decided cases informed the description given by Bingham LJ of this category. The first was the decision of the sheriff court in Diesen v Samson 1971 SLT (Sh Ct) 49. A photographer failed to turn up at a wedding, thereby leaving the couple without a photographic record of an important and happy day. The bride was awarded damages for her distress and disappointment. In the celebrated case of Jarvis v Swans Tours Ltd [1973] QB 233, the plaintiff recovered damages for mental distress flowing from a disastrous holiday resulting from a travel agent’s negligent representations: compare also Jackson v Horizon Holidays Ltd [1975] 1 WLR 1468. In Heywood v Wellers [1976] QB 446, the plaintiff instructed solicitors to bring proceedings to restrain a man from molesting her. The solicitors negligently failed to take appropriate action with the result that the molestation continued. The Court of Appeal allowed the plaintiff damages for mental distress and upset. While apparently not cited in Watts v Morrow [1991] 1 WLR 1421, Jackson v Chrysler Acceptances Ltd [1978] RTR 474 was decided before Watts v Morrow. In Jackson’s case the claim was for damages in respect of a motor car which did not meet the implied condition of merchantability in section 14 of the Sale of Goods Act 1893. The buyer communicated to the seller that one of his reasons for buying the car was a forthcoming touring holiday in France. Problems with the car spoilt the holiday. The disappointment of a

spoilt holiday was a substantial element in the award sanctioned by the Court of Appeal.”

- [41] Plaintiff was not able to occupy the property as her residence from 28.2.2018. So in my mind the manner in which Defendant dealt with Plaintiff which is evidenced from her messages marked P23 proves the mental agony she was going through as Defendant had virtually not completing the remaining work and even the work he had done was sub standard and this delayed her dream project at a picturesque location at a place where berthing from sea was possible.
- [42] Plaintiff had residential cum commercial objectives. Her peace of mind was lost due to actions of Defendant including the delay.
- [43] In UK Court of Appeal decision of West & Anor v Ian Finlay & Associates (a firm) [2014] EWCA Civ 316 (27 March 2014) Damages awarded for distress and inconvenience due to negligent renovation work that forced them to vacate their home for eighteen months, including issues like damp and defective installations. The court awarded £4,000 to the wife, £3,000 to the husband, and £1,000 to their infant son, based on the disruption and anxiety experienced, without any requirement for medical evidence.

It was held in West (supra)

“In our judgment, the judge ought not to have awarded damages above the well-accepted maximum mentioned in the AXA Insurance case. Whilst the stress and anxiety caused to the Wests and particularly to Mrs West was undoubtedly significant, it was not at the very top end of the scale, let alone above it. A proper award on the evidence before the judge, based on an adjusted maximum of around £3,000 per annum, would have been at a rate of £2,000 per annum for Mrs West, £1,500 per annum for Mr West and £500 per annum for Jacob. The disruption to a baby must be regarded as being at a much lower level than for an older child or an adult. On this basis, the award of general damages should have totalled £6,000.”

- [44] Plaintiff had well documented all her events and evidenced from electronic messages from social media account messages presented marked P23 and P28 at hearing and shows the conduct of Defendant that resulted this claim. Her peace of mind was denied due to breach of the Contract by Defendant *inter alia* through delay and substandard work.

[45] Considering the above assessments as there was no accepted amounts for mental distress for breach of contract or delay in Fiji the Plaintiff is granted a sum of \$3,000 under this claim. It is for the mental distress due to conduct of Defendant including delay. Building a house for a person creates a peace of mind to that person as well as members of the family. Only Plaintiff had claimed under this.

COUNTERCLAIM

[46] The Defendant's counterclaim for wrongful termination fails. There was no termination as the contract expired with Plaintiff completing only work worth \$64,823.66 VIP when he was paid more than \$153,000.

[47] It is illogical to think that Plaintiff who is an educated person would tolerate the manner of default and again extend her contract with Defendant. She needed to mitigate for losses already incurred by Defendant including delay and poor workmanship.

[48] So the request for extension made by Defendant was turned down with good reasons. So there was no unreasonableness in this regard.

[49] The contract clearly expired on 28 .2. 2018. The Plaintiff was entitled to refuse an extension in light of poor progress and defects. However, the Defendant is entitled to be credited for the value of works actually done which was valued at \$64,823.66

[50] Accordingly counter claim of Defendant is without merit. Defendant had failed to do work for the money paid and unjustly enriched to that amount.

[51] Defendant had also claimed for liquidated damages, but there was no clause that covers liquidated damages for any breaches or delay in payment by Plaintiff. So this claim is refused.

CALCULATION

Total payments received by Defendant from	
Plaintiff under the Contract	\$153,066.00
<u>Less</u> work done	(\$64,823.66)
Claim for unjust enrichment	\$ 88,242.34
Remedial work (P30)	\$28,000
General Damages for Mental anxiety	\$3000

General Damages due to delay	\$40,000
Total	\$159,240
Interest at the rate of 3% from the date of institution of this action to date of judgment (from 3.9.2018 to 30.9.2025)	\$33,440
Total	\$192,680

CONCLUSION

[52] Defendant’s counter claim is dismissed. Plaintiff had not extended the Contract after expiration of it as Defendant had seriously defaulted under it. Defendant’s inordinate delay and poor workmanship incurred loss to Plaintiff. Defendant was paid more than the work it did on the site and this overpayment is recoverable under unjust enrichment. Apart from that claim for remedial work as well as loss of rentals granted as stated. Plaintiff is also granted \$3000 as mental distress for loss of peace of mind considering her contemporaneous communications and nature of the Project. Cost of this action is summarily assessed at \$6,000 to be paid by Defendant to Plaintiff within 21 days.

FINAL ORDERS:

1. The Defendant is ordered to pay the Plaintiff the sum of \$192,680 as damages.
2. The Defendant’s counterclaim is dismissed.
3. The cost of this action is summarily assessed at \$6,000 and Defendant to pay it within 21 days from today.



.....
Deepthi Amarātunga
 Judge

At Suva this 30th day of September, 2025.

Solicitors
 Naidu Lawyers
 Nands Law