

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-VI
(NEW DELHI), 'M' BLOCK, 1STFLOOR, VIKAS BHAWAN,
I.P.ESTATE, NEW DELHI-110002.**

Case No.CC-146/2022

IN THE MATTER OF:

**1. Ms Payal Singh
W/o Sh. Yogesh Kumar**

**2. Sh. Yogesh Kumar
S/o Sh. Raj Kishan**

**Both Residents of:
R/o- Flat no. 536, Sector-15,
Modern Apartments, Rohini
Delhi-110085**

..Complainants

VS

**M/s Ansal Properties and Infrastructure Limited
(Throught its Directors)
Regd. Office: 115, AnsalBhawan
16, Kasturba Gandhi Marg,
New Delhi-110001**

..Opposite Party

Quorum:

**Ms. PoonamChaudhry, President
Sh. Bariq Ahmad, Member
Sh. Shekhar Chandra, Member**

**Date of Institution:-23.06.2022
Order reserved on:15.03.2024
Date of Order : -01.04.2024**

ORDER

PoonamChaudhry, President

1. The present complaint has been filed under section 35 of Consumer Protection Act, 2019 (in short CP Act), against opposite party (in short OP) alleging deficiency of service.

2. Briefly stated the facts of the case are that the opposite party is a public limited company, involved in Real Estate Development and construction work having its registered office at 115, AnsalBhawal 16, Kasturba Gandhi Marg, New Delhi-110001.
3. It is also alleged that in the year 2012 the complainants, being allured by advertisement and the scheme in the name and style of “Green Escape Apartments Sonipat” at Sonipat (Haryana) which was advertised in all leading newspapers in India, decided to purchase a flat. The complainant no.1 and complainant no.2 approached the opposite party and booked a flat of 1690 sq. feet on 14.08.2012 for a sum of Rs.33,87,400/- (Rupees Thirty Three Lakh Eighty Seven Thousand Four Hundred) (Basic Price) by paying the booking amount of Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand) through cheque bearing No.-“011712”.
4. The booking of the complainants was duly accepted by the opposite party and Flat No. “0102-16-0901” measuring 1690 Sq. feet was allotted to the complainants vide allotment letter dated 20.08.2012.
5. It is also alleged that, as per the agreement and schedule of payment the complainants had paid a total sum of Rs.13,61,236/- (Rupees Thirteen Lakh Sixty One Thousand Two Hundred Thirty Six) to the opposite party 2012-2013 towards the payment of the above said flat.The opposite party also issued a statement of account which reflects the payment made by the complainants to OP.

6. It is further alleged that in 2012 at the time of booking of the said flat/apartment, the OP assured that the construction of said flat/apartment will complete within a period of 42 months from the date of booking and possession of the same shall be handed over to the complainant after 42 months from the date of booking i.e. 20.08.2012.
7. However after two-three years of the allotment, the complainant no.1 along with complainant no.2 visited the site but to their utter shock and disappointment, the complainants found that no construction work was commenced by the opposite party at the site/land.
8. That, complainants, visited the office of the opposite party several times, to know the status of construction of their flats and delivery of possession the said flat. The OP assured that possession would be handed over to the complainants within a short period.
9. It is also alleged complainants sent legal notice dated 22.10.2018 to OP. Thereafter several reminders were sent to refund the money.
10. It is also alleged that the opposite party issued a cheque bearing no. "421428" drawn on Punjab National Bank amounting Rs.2,00,000/- (Rupees Two Lakh) towards the part payment of abovesaid outstanding amount i.e. Rs.13,61,236/- (Rupees Thirteen Lakh Sixty One Thousand Two Hundred Thirty Six).
11. It is also alleged that due to the inaction of opposite party, the complainants were forced to purchase an alternate flat which cost almost

four times the price of the flat booked by complainants with the OP. It is alleged that the complainants had taken a loan from the Bank of Baroda in the year 2018 for the alternate flat. The opposite party is solely responsible and liable for the extra cost incurred in purchasing the alternate flat.

12. It is also alleged that as per clause 5.1 of the agreement dated 22.10.2012 it was agreed by the opposite party that the possession of flat shall be handed over to the complainants latest by 42 months with an extended period of 6 months. It was further agreed as per clause 5.4 of the agreement that in case of failure of deliver the possession of flat within the agreed time, the opposite party shall pay a sum of Rs.5 per sq. ft. for the period of delay. The period of handing over of said flat has already lapsed on 22.10.2015 which includes the extended period of six months. The opposite party is now liable for the agreed compensation for the delayed period which comes to 80 months till June, 2022.

13. It is also stated that the registered office of the opposite party is situated within the territorial jurisdiction of this Forum and the opposite party works for gain within the territorial jurisdiction of this Forum. Thus this Forum has pecuniary as well as territorial jurisdiction to entertain the complaint. It is also alleged that complaint has been filed within prescribed period of limitation. The complainants have not filed any other or similar complaint/application before any other authority or any Court of

Law within and outside India for resolving this dispute. That necessary Court fee has been affixed and deposited with present complaint.

14. It is prayed that:

- a) Opposite party be directed to deliver physical possession of an alternate flat admeasuring same area i.e. 1690 sq. ft. within the same locality.

Or in alternate

- b) Direct the opposite party to refund the amount of Rs.11,61,236/- (Rupees Eleven Lakh Sixty One Thousand Two Hundred Thirty Six) with interest 24% per annum from its date of deposit till the date of actual realization.
- c) Opposite party be also directed to pay a sum of Rs.25,00,000/- (Rupees Twenty Five Lakh) towards the escalation of the cost of the flat during delayed period. And pay a sum of Rs.6,76,000/- (Rupees Six Lakh Seventy Six Thousand) towards the compensation of delayed period in terms of clause 5.4 of the agreement dated 22.10.2012.
- d) Opposite party be further directed to pay Rs.15,00,000/- (Rupees Fifteen Lakh) for the harassment, mental agony.
- e) Award Rs.55,000/- (Rupees Fifty Five Thousand) as legal expenses incurred by complainant for filing the present complaint.

15. Notice of the complaint was issued to OP, OP was served on 25.07.2022. however as written statement was not filed within the statutory period, defence of OP was struck off vide order dated 21.04.2023.

16. Complainant No.1 filed her evidence by affidavit reiterating the averments made in the complaint. The complainants relied upon the allotment letter dated 20.08.2012, the agreement dated 22.10.2012, receipts of payments issued by OP, statement of account issued by OP acknowledging the payments made by complainants. The legal notice.

17. It was contended on the behalf of the complainants that OP was deficient in providing services as OP failed to deliver the property within the period stipulated in the agreement. As regard deficiency in services, Hon'ble Supreme Court has held in **Arifur Rahman Khan and Ors. V. DLF Southern Homes Pvt. Ltd. And Ors. 2020(3) RCR Civil 544** that the failure of the developer to comply with the contractual obligation to provide the plot to a flat purchaser within the contractually stipulated time frame, amounts to deficiency.

18. It was also held in Lucknow Development Authority Vs. M.K. Gupta, 2 1994(1) SCC 243 by Hon'ble Supreme Court that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for a consideration, it is a "service" as defined by Section 2 (o) of the Consumer Protection Act, 1986. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service. Person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with compensation.

19. After giving our careful thought to the arguments advanced by Ld. Counsels for parties, we are of the view that admittedly, there is inordinate delay in handing over the possession of the flat in question which amounts to deficiency in service.

20. It is to be noted Section 2 (47) of the Consumer Protection Act, 2019, defines 'unfair trade practices' in the following words: "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 Hon'ble Supreme Court held in above case of Lucknow Development Authority Vs. M.k. Gupta, 1994(1) SCC 243, that when possession is not handed over within the stipulated period, the delay so caused is not only deficiency of service but also unfair trade practice.

21. It is also pertinent to note Hon'ble Supreme Court also held in Fortune Infrastructure and Anr. Vs. Trevor D'Lima and Ors. 2018(5) SCC 442 that a person cannot be made to wait indefinitely for possession of flat and they are entitled to seek refund of the amount paid by them along with compensation.

Thus as the services of OP were deficient, the complainants were justified in claiming refund of the amount deposited by him with compensation.

22. We are further of the view that the cause of action is a continuing one as the amount advanced by complainants were not refunded neither possession of the flat was handed over to them, the complaint is within the period of limitation.

23. As regards the rate of interest Counsel for OP relied upon a decision of Hon'ble State Commission in Complaint no. 37/2017 titled Mridula Ghosh and Another Vs. Ansal Hi-Tech Townships Limited decided on 22.01.2021 wherein it was held as under:

“It is imperative to refer to the recent pronouncement of the Hon'ble Supreme Court in terms of “Interest” which is being allowed on the refunded amount. In Arifur Rahman Khan and Ors. (supra) (2020 (3) RCR Civil 544 which is the latest pronouncement (24.08.2020) on the cause, the Hon'ble Apex Court has allowed an interest @6% p.a. on the amount received by the opposite party, payable within one month and in case of default to pay within the stipulated period, an interest @9% p.a. was payable on the said amount.”

24. In view of the unrebutted testimony of complainants and the documents relied upon, we are of the view the OP is guilty of deficiency in services. We accordingly direct OP/M/s Ansal Properties and Infrastructure Limited to refund the amount of Rs.11,61,236/- (Rupees Eleven Lakh Sixty One Thousand Two Hundred Thirty Six) to the complainants with interest @6% p.a. from the date of each deposit, within 4 weeks from the date of receipt of order, failing which OP will be liable to pay interest @9% p.a.

till realization. We further award compensation of Rs.1,00,000/- (Rupees One Lakh) for mental agony and harassment and Rs.25,000/- (Rupees Twenty Five thousand) as cost of the litigation.

A copy of this order be provided/sent to all the parties free of cost.

The order be uploaded on the website of this Commission.

File be consigned to record room along with a copy of the order.

PoonamChaudhry
(President)

Bariq Ahmad
(Member)

Shekhar Chandra
(Member)