

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL  
COMMISSION**

**Date of Admission: 25.04.2016**

**Date of hearing: 13.09.2022**

**Date of Decision: 09.01.2023**

**COMPLAINT CASE NO.- 421/2016**

**IN THE MATTER OF:**

**MR. ARVINDER SINGH ANEJA**

S/O MR. H. S ANEJA

R/O 9/13, NEHRU ENCLAVE, EAST,  
NEW DELHI

**MS. PREETI ANEJA**

W/O MR. A.S ANEJA

R/O 9/13, NEHRU ENCLAVE, EAST,  
NEW DELHI

**(Through: Mr. Mahesh Srivastava, Advocate)**

...Complainants

**VERSUS**

**M/S AGRANTE REALITY LTD.**

REGD OFFICE AT;

522-524, DLF TOWER -A,

JASOLA, NEW DELHI – 11004

(THROUGH ITS MANAGING DIRECTOR)

**(Through: Mr. Alok Tripathi, Advocate)**

...Opposite party

**CORAM:****HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)****HON'BLE MS. PINKI, MEMBER (JUDICIAL)**

Present: Mr. Kanishk Khullar, Counsel for the Complainant.  
None for the Opposite Party.

**PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)**  
**JUDGMENT**

1. The present complaint has been filed by the complainants before this commission alleging deficiency of service on the part of Opposite Party and have prayed the following reliefs:

- a) *Direct the Opposite Party no. 1 to pay a sum of Rs. 22,54,442.50/- calculated as on 18.08.2015.*
- b) *Direct the Opposite Party to pay the future interest @ 24% from the date of filing till realization.*
- c) *Any other relief that this Hon'ble Forum may deem fit and proper in the interest of justice"*

2. Brief facts necessary for the adjudication of the present complaint are that Complainants booked an apartment bearing no. 1004 with the Opposite Party in the project namely 'Beethoven8' situated at Sector, 107, Gurgaon. The total basic price of the said apartment is Rs. 1,08,96,675/- and at the time of booking, the Opposite Party promised to deliver the said apartment within 3 years i.e. by July 2016. The complainants over the time had paid a sum of Rs. 18,18,098.77/- to the Opposite Party for the said apartment. However, the Opposite party till date failed to even start the construction of the tower in which the apartment of the complainants is located. The complainants visited the office of the Opposite Party asking for delivery of the said apartment but the Opposite Party failed to give any satisfactory response. Aggrieved by this, the

complainants sent notice dated 18.08.2015 to the Opposite Party seeking refund of the money deposited by them along with interest but was of no avail.

3. During the course of proceedings, the Opposite Party filed the written statement vide Diary no. 2610 on 21.03.2017 but failed to file the evidence by way of affidavit despite opportunities vide order 01.08.2018 and 18.02.2019. Consequently, the right of the Opposite Party to file the evidence by way of affidavit was closed vide order dated 02.09.2019. Since the right of the Opposite Party to file the evidence by way of affidavit was closed, the contentions made in the written statement cannot be considered in the present case and thus, the averments made by the Complainants in the present complaint remains un rebutted.
4. The Complainants have filed the Evidence by way of Affidavit in order to prove the averments on record. We have perused the material available on record and heard the counsel for the complainant.
5. The fact that the Complainants were allotted an apartment bearing no. Harmony 1/B/1004 having area of approx. 1702 sq. ft. by the Opposite Party in the project 'Beethovens 8' at Sector 107, Gurgaon is evident from the Allotment letter dated 12.09.2013 (*Exhibit CW-1/4*). Payment to the extent of **Rs. 18,18,098.77/-** made by the Complainants to the Opposite Party is evident from the receipts issued by the Opposite Party.
6. The only *question* for consideration before us is *whether the Opposite Party is deficient in providing its services to the Complainants or not*. It is appropriate to refer to the *First Appeal no. 348/2016* titled as "*Ajay Enterprises Pvt. Ltd. and Ors. vs.*

*Shobha Arora and Ors.*” decided on **10.05.2019**, wherein the Hon’ble NCDRC has held as under:

*“.....under Section 46 of the Indian Contract Act, 1872, the following provision is there:*

*46. Time for performance of promise, where no application is to be made and no time is specified - Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.*

*Explanation - The question "what is a reasonable time" is, in each particular case, a question of fact".*

*19. from the above provision it is clear that if there is no time limit for the performance of a particular promise given by one party, it is to be performed within a reasonable time. In most of the builder buyer agreements, the period ranges from 24 to 48 months and the most common agreement seems to be for 36 months plus grace period of six months for completion of construction and delivery of possession. If the possession is delivered beyond 42 months or beyond 48 months, the deficiency in service on the part of the Opposite Party shall stand proved.”*

7. A perusal of the above settled law reflects that if the possession is delivered beyond 42 months or beyond 48 months, the deficiency in service on the part of the builder shall stand proved. Returning to the facts of the present case, it is noted that there was no particular time specified for handing over the possession of the said apartment by the builder. It is clear that the Opposite Party till date has not handed over possession of the said apartment and more than nine years had passed from the date of booking. Therefore, the deficiency on the part of Opposite Party stands proved.

8. The complainants cannot be expected to wait for an indefinite time period to get the benefits of the hard-earned money which they have spent in order to purchase the property in question. (*Ref: Fortune Infrastructure v. Trevor D'Lima* reported at (2018) 5 SCC 442).
9. Keeping in view the facts of the present case and the extensive law as discussed above, we direct the Opposite Party to refund the entire amount paid by the Complainants i.e., **Rs. 18,18,098.77/-** along with interest as per the following arrangement:
  - A. An interest @ **6% p.a.** calculated from the date on which each installment/payment was received by the Opposite Party till **09.01.2023** (being the date of the present judgment);
  - B. The rate of interest payable as per the aforesaid clause (A) is subject to the condition that the Opposite Party pays the entire amount on or before **09.03.2023**;
  - C. Being guided by the principles as discussed above, in case the Opposite Party fails to refund the amount as per the aforesaid clause (A) on or before **09.03.2023**, the entire amount is to be refunded along with an interest @ **9% p.a.** calculated from the date on which each installment/payment was received by the Opposite Party till the actual realization of the amount.
10. In addition to the aforesaid and taking into consideration the facts of the present case, the Opposite Party are directed to pay a sum of:
  - A. Rs. 1,00,000/- as cost for mental agony and harassment to the Complainants; and
  - B. The litigation cost to the extent of Rs. 50,000/-.

11. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
12. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
13. File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)**  
**PRESIDENT**

**(PINKI)**  
**MEMBER (JUDICIAL)**

Pronounced On:  
**09.01.2023**