

IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION

Date of Institution: 01.06.2022

Date of hearing: 03.05.2023

Date of Decision: 25.08.2023

COMPLAINT CASE NO.- 85/2022

IN THE MATTER OF:

MS. NUPUR GUPTA,
D/O N.K. GUPTA,
R/O B-1/1842,
VASANT KUNJ, NEW DELHI-110070.

(Through: PSP Legal)

...Complainant

VERSUS

- 1. VATIKA SOVEREIGN PVT. LTD.,**
- 2. VATIKA LTD.**

THROUGH ITS DIRECTORS,
REGISTERED OFFICE AT:
FLAT NO. 621, DEVIKA TOWERS, 6 NEHRU PLACE,
NEW DELHI-110019.
CORPORATE OFFICE AT:
7TH FLOOR, VATIKA TRIANGLE,
BLOCK A, SUSHANT LOK, GURGAON-122001.

(Through: Mr. Pankaj Vivek, Advocate)

...Opposite Parties

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL
(PRESIDENT)****HON'BLE MS. PINKI, MEMBER (JUDICIAL)****HON'BLE MR. J.P. AGRAWAL, MEMBER (GENERAL)**

Present: Ms. Kashish Sareen, Counsel for the Complainant.
Mr. Naveen, Counsel for the Opposite Parties.

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

JUDGMENT

1. The present complaint has been filed by the Complainant before this Commission alleging deficiency of service on the part of Opposite Parties and has prayed the following relief:

- a) *“Direct the Opposite Party(s), for an immediate 100% refund of the total amount paid by the Complainant along with a penal interest @18% per annum from the date of receipt respective payments made to the Opposite Party;*
- b) *Direct the Opposite Party(s) to pay compensation of Rs. 5,00,000/- (Rupees Five Lakh Only) to the Complainant for mental agony, harassment, discomfort and undue hardships caused to the Complainant as a result of the above acts and omissions on the part of the Opposite Party(s);*
- c) *Direct the Opposite Party(s) to pay a sum of Rs. 1,00,000/-(Rupees One Lakh Only) to the Complainant towards litigation costs;*

d) That any other and further relief in favor of the Complainant as the Hon 'ble Commission may deem fit and proper in the fact and circumstances of the case."

2. Brief facts for the adjudication of the present complaint are that originally the Complainant booked a Plot bearing No. 50 with the Opposite Party in the Project 'Vatika India Next plots;, at Serenity Enclave, Sector-84, Gurgaon, Haryana on 05.06.2012 by paying a booking amount of Rs.9,17,000/- to the Opposite Parties. Thereafter, the Opposite party No.2 issued an Allotment Ltter dated 25.03.2013. The Complainant paid a total amount of Rs.54,93,600/- to the Opposite Parties till 23.06.2015, however the Opposite Parties failed to complete the construction of the said project and deliver the possession therefore the Complainant transferred the said booking and applied for allotment of Apartment in the project 'Vatika Soverign Park Limited' situated at Sector-99, Gurgaon, Haryana with the Opposite Party. Thereafter, the Opposite Parties executed a Builder Buyer Agreement dated 20.01.2016. Further, the Complainant paid a total amount of Rs.1,26,65,504/- till May, 2016 against a total consideration amount of Apartment of Rs.2,42,41,600/-. However, the Opposite Parties failed to complete the construction and handover the possession of the Apartment till date.
3. Thus, left with no other option, the Complainant approached this commission alleging deficiency of service on the part of Opposite Parties.
4. During the course of proceedings, notice was issued to the Opposite Parties vide order dated 05.07.2022. However, the

Opposite Party was unable to file written statement within 30 days therefore, the written statement filed by the Opposite Parties was not taken on record. Therefore, the right of the Opposite Party was closed by this Commission vide order dated 09.01.2023. Since the right of the Opposite Parties was closed, the averments made by the Complainant in the present complaint remains un rebutted.

5. The Complainant has filed the Evidence by way of Affidavit in order to prove her averments on record and also filed the written arguments.
6. We have perused the material available on record and heard the counsel of the Complainant.
7. The fact that the Complainant had booked a Plot bearing no. 50 and thereafter Apartment bearing No. 1801, Tower B with the Opposite Parties is evident from the Allotment Letter dated 25.03.2013 and Apartment Buyer Agreement dated 20.01.2016 (*Annexure-2&3 with the present complaint*). Payment to the extent of *Rs. 1,26,65,504/-* has been made by the Complainant to the Opposite Parties is also evident from the Statement of Account dated 26.02.2018 (*Annexure-4 with the present complaint*).
8. The only *question* for consideration before us is *whether the Opposite Parties are deficient in providing its services to the Complainant or not*. The expression Deficiency of Service has been dealt with by the Hon'ble Apex Court in *Arifur Rahman Khan and Ors. vs. DLF Southern Homes Pvt. Ltd. and Ors.* reported at *2020 (3) RCR (Civil) 544*, wherein it has been discussed as follows:

“23.The expression deficiency of services is defined in Section 2 (1) (g) of the CP Act 1986 as:

(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

24. A failure of the developer to comply with the contractual obligation to provide the flat to a flat purchaser within a contractually stipulated period amounts to a deficiency. There is a fault, shortcoming or inadequacy in the nature and manner of performance which has been undertaken to be performed in pursuance of the contract in relation to the service. The expression 'service' in Section 2(1) (o) means a service of any description which is made available to potential users including the provision of facilities in connection with (among other things) housing construction. Under Section 14(1)(e), the jurisdiction of the consumer forum extends to directing the opposite party inter alia to remove the deficiency in the service in question. Intrinsic to the jurisdiction which has been conferred to direct the removal of a deficiency in service is the provision of compensation as a measure of restitution to a flat buyer for the delay which has been occasioned by the developer

beyond the period within which possession was to be handed over to the purchaser. Flat purchasers suffer agony and harassment, as a result of the default of the developer. Flat purchasers make legitimate assessments in regard to the future course of their lives based on the flat which has been purchased being available for use and occupation. These legitimate expectations are belied when the developer as in the present case is guilty of a delay of years in the fulfilment of a contractual obligation.

9. At this stage, we deem it appropriate to refer to Clause 13 of the Apartment Buyer Agreement dated 20.01.2016 entered into by both the contesting parties. It reflects that the Opposite Parties undertakes to complete the construction of the said Apartment within a period of 48 months from the date of execution of this Agreement but the Opposite Parties failed to handover the possession within the stipulated period.
10. Relying on the above settled law, we hold that the Opposite Parties are deficient in providing its services to the Complainant as the Opposite Parties had given false assurance to the Complainant with respect to the time for handing over the possession of the said Apartment and kept the hard-earned money of the Complainant.
11. The Complainant 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).

12. Keeping in view the facts of the present case and the extensive law as discussed above, we direct the Opposite Parties to refund the entire amount paid by the Complainant i.e., **Rs. 1,26,65,504/-** 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 Parties till **25.08.2023** (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 Parties pays the entire amount on or before **25.10.2023**;
 - C.** Being guided by the principles as discussed above, in case the Opposite Parties fails to refund the amount as per the aforesaid clause (A) on or before **25.10.2023**, 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 Parties till the actual realization of the amount.
13. In addition to the aforesaid and taking into consideration the facts of the present case, the Opposite Parties are directed to pay a sum of:
- A.** Rs. 6,00,000/- as cost for mental agony and harassment to the Complainant; and
 - B.** The litigation cost to the extent of Rs. 50,000/-.
14. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.

15. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
16. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

(J.P. AGRAWAL)
MEMBER (GENERAL)

Pronounced On:
25.08.2023