

IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION

Date of Institution: 08.06.2017

Date of Hearing: 01.12.2025

Date of Decision: 27.01.2026

COMPLAINT CASE NO- 1046/2017

IN THE MATTER OF

1. **MR. GAGAN BAGHEL,**
S/O MR. BRIJENDRA SINGH BAGHEL,

2. **MRS. MANJU BAGHEL,**
W/O MR. BRIJENDR SINGH BAGHEL,
BOTH R/O 7, JAWAHAR NAGAR,
BYE PASS ROAD, KHANDARI,
AGRA – 282002.

(Through: Mr. Vikrant Arora, Advocate)

...Complainants

VERSUS

M/S G.S. PROMOTERS PVT. LTD.,
THOURGH ITS MD/DIRECTOR/
PRINCIPAL OFFICE,
HAVING ITS REGD. OFFICE AT:
SIKKA HOUSE, C-60, PREET VIHAR,
VIKAS MARG DELHI – 110092.

(Through: Mr. Sudeep Kumar Shrotriya, Advocate)

...Opposite Party

CORAM:

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

HON'BLE MS. BIMLA KUMARI, MEMBER (FEMALE)

Present: Mr. Vikrant Arora, counsel for the Complainants.
Mr. Yovraj Sardhana, counsel for the OP appeared
through Vc.

**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 and unfair trade practice by the Opposite Party and has prayed the following reliefs:

1. *Pass an award directing opposite party/Respondent to handover the possession of the flat in question i.e. flat/unit bearing no. Flat No. 402 Peace B on 4th Floor, 3 BHK, measuring about 1510 sq. ft. super area (approx.) in SIKKA KARMIC GREEN, situated at Plot No.-1/C, Sector 78, Noida, UP;*
2. *Or in the alternative refund the deposited amount to the Complainants as mentioned above in para no.13 along with pendent lite interest @ 18% p.a. till the date of payment/refund i.e. Rs. 90,07,130/- (Rupees ninety lacs seven thousand and one hundred thirty only) ;*
3. *Pass an award in the sum of Rs.5 lacs being the amount of compensation on account of financial loss, physical and mental harassment to the Complainants;*
4. *Award a cost of litigation in the sum of Rs.35,000/- in favour of the complainant and against the opposite party.*
5. *Pass such other and further order as this Hon'ble court may deems fit in interest of justice.*

2. The brief facts necessary for the adjudication of the present complaint are that the Complainants booked a residential flat 3

BHK flat bearing No. 402 on the 4th floor, measuring 1510 sq. ft. in the project “*Sikka Karmic Green*” of the Opposite Party, situated at Plot No. 1/C, Sector-78, Noida, U.P., by paying an amount of Rs.6,92,714/-. Thereafter, the Opposite Party vide Flat Allotment Agreement dated 15.01.2015 was executed between the parties for the said flat for the total basic sale price of Rs. 69,27,130/-. As per clause 26 of the said agreement, the Opposite Party was to complete the construction of the said flat within 20 months from the date of the agreement. However, the Opposite Party failed to complete the construction within the specified period of 20 months.

3. Thereafter, the Complainants paid a total amount of Rs.62,34,720/- to the Opposite Party as and when demanded, up to 28.02.2016. Accordingly, the Opposite Party vide offer of possession for fit-out letter dated 28.03.2016, demanded the last instalment, which was duly paid by the Complainants but the Opposite Party has failed to hand over possession to the Complainants till date. The Complainants made several communications regarding possession but no satisfactory response was received.
4. Moreover, the Complainants later came to know that the Opposite Party had failed to obtain the occupation certificate till date as the construction of the said project/flat was incomplete. As a result, the Complainants issued a legal notice dated 23.01.2017 seeking possession of the said flat or, in the alternative, refund of the amount deposited by them along with interest but the Opposite Party merely replied to the said notice by shifting the entire blame upon the Complainants, instead of handing over possession of the

flat. Thus the Complainants approach this commission alleging deficiency in services on the part of the Opposite Party.

5. The Opposite Party has contested the present complaint and raised preliminary objections regarding the maintainability of the same. The counsel for the Opposite Party submitted that the Complainants have no cause of action to file the present complaint. He further submitted that the present complaint is barred by territorial jurisdiction as the flat in question is situated at Noida, Uttar Pradesh. He also submitted that this Commission lacks pecuniary jurisdiction to entertain the present complaint. The counsel for the Opposite Party further contended that the jurisdiction of this commission is barred in view of the fact that the present complaint is in fact a suit for recovery on which court fees is payable and would lie in a Civil Court and as the matter involves complicated question of facts and law which is needed to be proved by detailed oral and documentary evidences.
6. The counsel for the Opposite Party submitted that the Complainants were habitual defaulters in making payments towards the said flat and failed to maintain financial discipline despite being granted several opportunities. Consequently, the Opposite Party vide letter dated 17.12.2015, terminated the allotment of the Complainants. Moreover, there is a shortfall of approximately Rs.11.5 lakh towards the payment of the said flat, which remains unpaid till date. He further submitted that the Complainants were granted seven days to seek refund and to complete the necessary formalities but they failed to come forward for the same. He also submitted that although the Complainants initially requested restoration of their booking and assured timely

payment, they subsequently accepted the termination and enquired about the procedure for refund. Lastly, he submitted that there is no deficiency in service on the part of the Opposite Party, as it has fulfilled its obligations in accordance with the agreement. Pressing the aforesaid objections, the Opposite Party prayed for dismissal of the present complaint with costs.

7. The Complainants have filed the Rejoinder rebutting the written statement filed by the Opposite Party. Both the parties have filed their Evidence by way of Affidavit in order to prove their averments on record.
8. The Complainants have filed their written arguments and have reiterated the averments and allegations made in the present complaint. The Complainants have submitted that the Opposite Party failed to hand over possession of the flat within the stipulated time and did not obtain the requisite Occupation Certificate, thereby committing deficiency in service and unfair trade practice. The Complainants have prayed for appropriate reliefs as sought in the complaint.
9. The Opposite Party has also filed its written arguments, wherein all the allegations levelled by the Complainants have been denied. The Opposite Party has submitted that there is no deficiency in service on its part and that the Occupation Certificate for the project was obtained in the year 2017. He further been submitted that possession of the flats was duly offered and handed over to the allottees.
10. We have perused the material available on record.
11. The fact that the Complainants had booked the said flat with the Opposite Party is evident from the Flat Allotment Agreement dated

15.01.2015 (*Annexed at pg. 9 of the Complaint*). Payment to the extent of Rs. 69,27,130/- by the Complainants to the Opposite Party is not disputed it.

12. The first issue to be adjudicated is *whether the Complainants have cause of action to approach this commission*. It is imperative to refer to Section 24A of the Consumer Protection Act, 1986 wherein it is provided as under:-

“24A. Limitation period.-

(1) *The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.*

(2) *Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the Complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint as this such period:*

Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.”

13. Analysis of Section 24A of the Consumer Protection Act, 1986 leads us to the conclusion that this commission is empowered to admit a complaint if it is filed within a period of two years from the date on which cause of action has arisen. In the present case neither possession of the said flat in question has been delivered, nor has the amount deposited by the Complainants been refunded till date. We further deem it appropriate to refer to *Mehnga Singh Khera and Ors. Vs. Unitech Ltd.* as reported in I (2020) CPJ 93

(NC), wherein the Hon'ble National Commission has held as under:

“It is a settled legal proposition that failure to give possession of flat is continuous wrong and constitutes a recurrent cause of action and as long as the possession is not delivered to the buyers, they have every cause, grievance and right to approach the consumer courts.”

14. Applying the above settled law, it is clear that failure to deliver possession being a continuous wrong which constitutes a recurrent cause of action and, therefore, so long as the possession is not delivered to the Complainants. The Complainants are within their right to file the present complaint before this commission.
15. *The second question for consideration is whether this commission has the territorial jurisdiction to adjudicate this complaint?*
16. The question for consideration is whether this commission has the jurisdiction to adjudicate the present complaint. We deem it appropriate to refer to Section 17(2) of the Consumer Protection Act, 1986 which provides as under:

“(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction-

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.”

17. Analysis of Section 17 of the Consumer Protection Act, 1986 leads us to the conclusion that clause 17(2) of the Act provides the extent of territorial jurisdiction, wherein it has been provided that the state commission shall have the jurisdiction to entertain cases where opposite party at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain or the cause of action arose.
18. Having discussed the statutory position, the facts of the present case reflect the registered office of the Opposite Party is at Sikka House, C-60, Preet Vihar, Vikas Marg, Delhi – 110092. Since the registered office falls within the territory of Delhi, this commission has the territorial jurisdiction to adjudicate the case. To strength the aforesaid findings, we tend to rely on *Rohit Srivastava v. Paramount Villas Pvt. Ltd.* reported at *2017 SCC OnLine NCDRC 1198*, wherein it has been held as under:

“It is not in dispute that the Registered Office of Opposite Party No. 1 Company is situated in Delhi, i.e., within the territorial jurisdiction of the State Commission at Delhi and therefore, in the light of clear provision contained in Section 17(2)(a), which stipulates that a Complaint can be instituted in a State Commission, within the limits of whose jurisdiction, the Opposite Party actually carries on business. In view of the said provision, we have no hesitation in coming to the conclusion that since the Registered Office of the first Opposite Party is situated in Delhi, the State Commission did have the territorial jurisdiction to entertain the Complaint.”

19. Relying on the above settled law, we are of the view that this commission has the territorial jurisdiction to adjudicate the present complaint.
20. The next question for consideration before us is **whether this commission has pecuniary jurisdiction to adjudicate the present complaint?**
21. The Opposite Party contended that this commission does not have the pecuniary jurisdiction to adjudicate the present complaint. We deem it appropriate to refer to Section 17 of the Consumer Protection Act, 1986 which provides as under:

“(1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction—

(a) to entertain-

(i) complaints where the value of the goods or services and compensation, if any, claimed [exceeds rupees twenty lakhs but does not exceed rupees one crore]; and

(ii) appeals against the orders of any District Forum within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction-

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.”

22. Analysis of Section 17 of the Consumer Protection Act, 1986 leads us to the conclusion that this commission shall have the pecuniary jurisdiction in cases where the total claim including the compensation is more than twenty lakhs and less than One Crore.
23. Having discussed the statutory position, the facts of the present case reflect that the value of the flat and the compensation prayed for by the complainant is beyond Rs. 20 Lakhs but does not exceed

Rs. 1 Crore, accordingly, this commission has the pecuniary jurisdiction to deal with the present complaint

24. The next question for consideration for us *whether the civil court has jurisdiction and jurisdiction of the consumer commission barred.*
25. The Opposite Party contended that the jurisdiction of this Commission would be barred in view of the fact that the present complaint is in fact a suit for recovery on which court fees is payable and would lie in a Civil Court.
26. The Consumer Protection Act, 1986, came into being in order to protect the interests of *Consumers* who are affected by the acts of the service providers, who in order to attract the Consumers, tend to make lucrative offers but when it comes to actually providing the offered services, they take a step back.
27. Deficiency has been defined under section 2 sub-clause (g) which reads as follows:

“(2) (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;”

28. Returning to the facts of the present complaint, the perusal of the record shows that the Complainants avail the services of the Opposite Party for a consideration. However, the Opposite Party failed to complete the said project, aggrieved by which, the Complainants have sought the relief against it. Hence, the Complainants are entitled to file the present complaint before this commission since the Complainants are aggrieved by the deficient

- services of the Opposite Party i.e., the failure of the Opposite Party to handover the possession within prescribed time in the agreement and it is only due to this reason, that relief is sought from the Opposite Party, which this Commission is authorised to adjudicate.
29. Our view is further fortified by the dicta of Hon'ble Supreme Court in *Narne Construction P. Ltd., etc. v. Union Of India and Ors. Etc.*, reported at *AIR 2012 SC 2369*, wherein it was held that when a person applies for the allotment of a building or site or for a flat constructed by the Development Authority and enters into an agreement with the Developer, or the Contractor, the nature of transaction is covered by the expression 'service' of any description. Housing construction or building activity carried on by a private or statutory body constitutes 'service' within the ambit of Section 2(1)(o) of the Act and any deficiency or defect in such service would make it accountable before the competent consumer forum at the instance of consumers.
30. Moreover, nothing cogent has been brought on record by the Opposite Party which would reflect that there are such complicated questions involved which could not be settled on the basis of the pleadings filed on behalf of the contesting parties.
31. Consequently, we are of the view that the present complaint falls within the four corners of the jurisdiction of this commission and there is no bar with respect to the jurisdiction of this commission to entertain cases related to the refund of amount deposited with the Opposite Party.
32. The main question for consideration before us is *whether the Opposite Party deficient in providing its services to the Complainants?*

33. The Opposite Party contended that the Complainants failed to make the payments prescribed as per the construction linked payment plan opted, despite service of various reminder letters. Therefore, the Opposite Party vide letter dated 17.12.2015, cancelled the allotment as per the Flat allotment agreement.
34. To deal with this issue, we deem it appropriate to the expression deficiency of services is defined in Section 2 (1) (g) of the Consumer Protection 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.*
35. The expression 'service' in Section 2(1)(o) of the Consumer Protection Act, 1986 is defined as:
- (o) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service"*
36. On perusal of the record, it is noted that the Complainants had booked a residential flat with the Opposite Party and an Agreement dated 15.01.2015 was executed between the parties. It is further clear from the Agreement that the total basic sale price of the said flat was Rs.67,19,500/-, for which the Complainants opted for Payment Plan-I. Accordingly, the Complainants paid a total

amount of Rs.69,27,130/- towards the said flat up to 28.04.2016 i.e., more than the agreed basic sale price.

37. The Opposite Party has contended that it had terminated the allotment vide termination notice dated 17.12.2015. However, the record clearly reveals that the Complainants continued to make payments towards the said flat even after the alleged termination i.e., on 18.12.2015, 18.01.2016, 14.03.2016 and 18.05.2016. Moreover, we fail to find anything on record to show that the Opposite Party ever objected to the receipt of the aforesaid payments. On the contrary, the said payments were duly acknowledged and accepted by the Opposite Party. Furthermore, it is evident from the Offer of Possession for Fit-Out letter dated 28.03.2016 issued by the Opposite Party, that the flat was offered to the Complainants for fit-out purposes. In view of the above, the contention of the Opposite Party that the Complainants are not entitled to any relief on the ground that the allotment had already been cancelled is devoid of any merit.
38. Consequently, we are of the view that the Opposite Party continuously accepted the payments made by the Complainants and also issued an offer of possession. Therefore, the submission of the Opposite Party regarding default is an afterthought and cannot be sustained.
39. Additionally, it is pertinent to mention that as per the Agreement dated 15.01.2015, the Opposite Party was to complete the construction of the flat within a period of 20 months from the date of the Agreement. Admittedly, the Opposite Party obtained the Occupation Certificate only on 21.11.2017. It is further noted that the stipulated period for completion of construction expired on

15.09.2016 and after adding a grace period of six months, the extended date expired on 15.03.2017. Thus, it is apparent that the construction of the flat/project was significantly delayed.

40. Resultantly, we hold that the Opposite Party failed to complete the construction and hand over possession of the flat within the stipulated time and kept the hard earned money of the Complainants.
41. 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.69,27,130/-** 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 **27.01.2026** (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 **27.03.2026**;
 - 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 **27.03.2026**, 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.
42. In addition to the aforesaid and taking into consideration the facts of the present case, the Opposite Party is directed to pay a sum of:

- A.** Rs. 3,00,000/- as cost for mental agony and harassment to the Complainants; and
- B.** The litigation cost to the extent of Rs. 35,000/-.
43. Applications pending, if any, stands disposed of in terms of the aforesaid judgment.
44. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
45. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(BIMLA KUMARI)
MEMBER (FEMALE)

Pronounced On:

27.01.2026

LR-ZA