

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

Date of Institution: 06.06.2019

Date of hearing:18.10.2022

Date of Decision: 20.01.2023

COMPLAINT CASE NO.- 569/2019

IN THE MATTER OF

**MR. PRAVEEN CHAUHAN,
S/O LATE MR. ROHTASH KUMAR,
R/O VILLAGE CHHLERA, GALI NO. 3,
SECTOR – 44, NOIDA, UTTAR PRADESH.**

(Through: Mr. Sanjeev Chauhan, Advocate)

...Complainant

VERSUS.

**TDI INFRASTRUCTURES (P) LTD.
UG FLOOR, VANDANA BUILDING,
TOLSTOY MARG, CONNAUGHT PLACE,
NEW DELHI – 110001.**

(Through: Mr. Rajat Bhardwaj, Advocates)

...Opposite Party

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

Present: Mr. Jaspreet Kaur, Counsel for the Complainant.
None for the Opposite Party.

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

1. The present complaint has been returned from the District Forum on the ground of pecuniary jurisdiction at the stage of final argument on 03.01.2019, filed by the Complainant before this commission alleging deficiency of service on the part of the Opposite Party and has prayed the following reliefs:

- a) *direct the Opposite Party to pay to the complainant a sum of Rs. 10,97,812/- with interest at the rate of 18% per annum from the date of deposit of the said amount till its realization; and*
- b) *direct the Opposite Party to pay to the complainant a compensation of Rs.5,00,000/- for the harassment, sufferings and trauma caused to the complainant on account of the deficient services rendered by the Opposite Party;and*
- c) *direct the Opposite Party to pay to the complainant cost and litigation expenses of this present complaint; and/or*
Pass/make any other order that this Hon'ble Forum may deem fit and proper in the facts and circumstances of the present case.

2. The brief facts necessary for the adjudication of the present complaint are that the Complainant on 13.03.2006 booked a flat bearing no. G-6-0101 @ 1,750/- per sq. ft. in the project named as

‘TDI CITY’ developed by Opposite Party situated at Kundli, Sonipat, Haryana and an advance registration payment of Rs. 3 lakhs had been made by the Complainant. Thereafter, an allotment letter dated 19.02.2007 was issued by the Opposite Party according to which the Complainant had paid a sum of Rs. 10,97,812/- to the Opposite Party as and when demanded by it. However, in October 2012, the Complainant was totally shocked to see that the Opposite Party has completely changed the layout plan of the complex and no prescribed time period was provided to complete the said construction. Aggrieved by this, the Complainant requested for the refund of his deposit with interest @ 18% but the Opposite Party threatened to forfeit the 50% of the amount out of the total amount deposited by the Complainant.

3. The Opposite Party has contested the present case and raised preliminary objections as to the maintainability of the complaint case. The counsel of the Opposite Party submitted that there is no cause of action in favour of the Complainant to file the present complaint. The counsel for the Opposite Party further submitted that there was default in making payment towards the said flat. The Complainant was under obligation to pay EDC charges at the time of booking and various reminders were sent to pay EDC charges regarding the said flat but the complainant failed to pay EDC charges. He also submitted that layout out plan was tentative and had to finalised as per rule and regulation by the concerned authority.
4. The Complainant has filed the Rejoinder rebutting the written statement filed by the Opposite Party. Both the parties have filed their Evidence in order to prove their averments on record.

5. We have perused the material available on record and heard the counsel for the parties.
6. The fact that the Complainant had booked a Flat with the Opposite Party is evident from the Allotment letter dated 20.02.2007 (*Annexed on the page 17 of the complaint*). Payment to the extent of Rs.10,97,812/- by the Complainant for the said flat which is not disputed by the Opposite Party.
7. The first issue to be adjudicated is *whether the Complainant has 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.”

8. 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 in all respects with agreed

facilities has been delivered, nor the amount deposited by the Complainant has 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.”

9. 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 Complainant. The Complainant is within their right to file the present complaint before this commission.

10. **Whether the Opposite Party is deficient in providing its services to the Complainant?**

11. Having discussed the preliminary objection raised on behalf of the Opposite Party, the next issue which arises is *whether the Opposite Party is actually deficient in providing its services to the Complainant.* 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.

12. In the present case, the Complainant contended that Opposite Party assured him to hand over the possession of the said flat by the end of year 2009. However, we failed to find any provision regarding as to time under which the Opposite Party has to handover the possession

of the flat in question to the Complainant. To resolve the said issue, we deem it appropriate to refer to “*Ajay Enterprises Pvt. Ltd. and Ors. vs. Shobha Arora and Ors.*” reported in *MANU/CF/0296/2019*, wherein it has been 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.”

13. Relying on the above settled law, if the possession is delivered beyond the 42 months or beyond 48 months, the deficiency in service on the part of the Opposite Party shall stand proved. However, in the present case, it is clear that the Opposite Party failed to handover the possession of the flat in question even after the passing of more than fifteen years from the date of booking.

14. The Opposite Party also contended that the Complainant has defaulted in making timely payments towards the outstanding dues of Extra Development Charges (EDC). Therefore, as per the agreed

terms, the Opposite Party has the right to forfeit 50% of the amount from the total amount deposited by the Complainant.

15.To adjudicate this issue, we gone through the evidences submitted by the parties and failed to find any executed Builder Buyer Agreement on record, in accordance to which the cancellation could be done by the Opposite Party and found that only provisional allotment letter has been issued by the Opposite Party till date. Therefore, we are of the view that Opposite Party has no right to cancel the aforesaid allotted flat of the Complainant and forfeit 50% of the total amount deposited by the Complainant.

16.Further to strengthen our view, we deem it appropriate to refer to *Consumer Case Nos. 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401 and 1402 of 2015* titled as *Vikram Jain and Ors. Vs. AAA Estate Pvt. Ltd.* decided on *07.11.2017*, wherein, the Hon'ble National Commission has held as under:

*“.....So far as the Complaint Nos. 1401 and 1402 of 2015 are concerned, wherein there is no builder buyer agreement signed by the parties and only allotment letters are there, I am of the opinion that if even after taking huge amount of the consideration, the builder buyer agreement is not signed, this also speaks of the deficiency on the part of the builder. Even in the case referred to by the learned counsel for the OP which is *Hansa V. Gandhi (supra)*, the Supreme Court has agreed with the order of the High Court for refund of the amount with interest.”*

17.The aforesaid dicta of the Hon'ble National Commission reflects that it is the duty of the Opposite Party to execute the builder buyer agreement and in the present case, the Opposite Party failed to execute builder buyer agreement. Therefore, the Opposite Party

cannot forfeit the amount equivalent to 50% of the total deposited amount by the complainant.

18.Relying on the above settled law, we hold that the Opposite Party is deficient in providing its services to the Complainant as the Opposite Party had given false assurance to the Complainant with respect to complete the construction of the said project and had kept the hard-earned money of the Complainant.

19.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 Complainant i.e., **Rs.10,97,812/-** 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 **20.01.2023** (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 **20.03.2023**;
- 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 **20.03.2023**, 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.

20.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. 1,00,000/- as cost for mental agony and harassment to the Complainant; and

B. The litigation cost to the extent of Rs. 50,000/-.

21. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.

22. 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.

23. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)

PRESIDENT

(PINKI)

MEMBER (JUDICIAL)

Pronounced On: **20.01.2023**