

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 890 OF 2021

(Against the Order dated 19/04/2021 in Complaint No. 92/2017 of the State Commission
Haryana)

1. M/S. TDI INFRASTRUCTURE PVT. LTD. & ANR.

MAHINDRA TOWER, 2A, BHIKAJI CAMA PLACE,
SECOND FLOOR, NEW DELHI-110066

2. M/S TDI CITY, KUNDLI

SITE OFFICE AT MAIN NH-1, KUNDLI,
SONEPAT, HARYANA, THROUGH DEPUTY MANAGER

.....Appellant(s)

Versus

1. ANITA

W/O SH. RAJ SINGH, R/O VILLA NO.345, SECTOR 19,
(BLOCK B), OMAXE CITY, SONEPAT, HARYANA

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER, MEMBER**

FOR THE APPELLANT : MR. PAWAN KUMAR RAY, ADVOCATE

FOR THE RESPONDENT : MR. GURADESH SINGH CHEEMA, ADVOCATE

Dated : 06 November 2024

ORDER

DR. SADHNA SHANKER, MEMBER

1. The present appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (corresponding section 51 of the Consumer Protection Act, 2019 (for short "the Act") by M/S TDI Infrastructure Pvt. Ltd. & Anr. (hereinafter referred to as the "builder company") assailing the Order dated 19.04.2021 passed by the State Consumer Disputes Redressal Commission, Haryana (hereinafter referred to as the "State Commission") in Complaint No. 92 of 2017, whereby the complaint was allowed.

2. We have heard the learned counsel for the builder company and learned counsel for the respondent (hereinafter referred to as the 'complainant') and have perused the record including *inter alia* the impugned Order dated 19.04.2021 of the State Commission and the memorandum of appeal.

3. Although the registry has reported that there is a delay of 194 days in filing the appeal but in view of the order of Hon'ble Supreme Court in *Suo Motu Writ Petition No. 3 of 2020*, the appeal is within limitation.

4. The facts, in brief, are that in the year 2006 the complainant applied for allotment of shop, for self-employment for herself and her son, in the project, namely, Radeo Drive Complex in TDI City at Kundli, of the builder company for a total cost of Rs. 27,50,000/-.

Initially, the complainant deposited a sum of Rs.5,50,000/- on 09.05.2006. On 29.04.2010, buyer agreement was entered between the complainant and the builder company and the builder company had allotted shop No. 188, Ground Floor, Radeo Drive Complex, TDI City, Kundli measuring super built up area of approximately 500 sq. feet. She further paid Rs.16,50,000/- on different dates in installments. In total, she has already paid Rs.22,00,000/- in different installments to the builder company. As per buyer agreement, the builder company had to hand over the possession of the shop within 24 months plus 06 months grace period i.e. by 29.10.2012, but, they failed to hand over the possession of the shop within the assured and agreed period. Thereafter, the complainant sent written representations/notices dated 03.10.2015, 14.03.2016 and 05.10.2016 regarding non delivery of the possession, but, the possession was not handed over to the complainant. It is pertinent to mention here that some property dealers have already been allotted shops in the mall and operating in the same building i.e. G.F. 32 to 43 (facing towards road), which was under construction but the complainant has not been given possession till date. It is alleged that even after a lapse of ten years, the said project did not complete. She requested the builder company to give possession of the shop No. GF 188 and pay compensation for delay in possession and non-performance of the contract along with interest.

5. Alleging deficiency in service on the part of the builder company, the complainant filed a complaint before the State Commission with the following prayer:-

(a) Direct the opposite parties to give possession of the shops No. GF-188, Rodeo Drive, Mall Cum Multiplex (NH-1), Kundli, Sonapat, Haryana measuring super area of approximately 500 sq. feet, as per the promises and guarantees of the apartment buyer agreement and pay compensation for delay in possession and non-performance of the contract, along with the interest at the rate of 24% per annum from the date promised for delivering possession i.e. 19.04.2012 of payment by the complainants till the date of its actual repayment by the opposite parties and its realization.

(b) Thus, keeping in view of the serious deficiency in service and unfair trade practices by opposite parties, complaints should be awarded compensation to the tune of Rs. 25 lakhs for delay in the handing over the possession, interest paid on the loan amount, for harassment, mental agony and frustration litigation expenses, inconvenience and mental agony as the complaint was constrained to file the same because of the callous and indifferent attitude of the opposite parties.

(c) Award Rs.1,10,000/- towards the litigation expenses;

(d) Orders to dispense with the filing of the certified copies/true typed/fair copies of annexures.

(e) Grant any other relief which this Commission may deem fit and proper under the facts and circumstances of the present case.”

6. The builder company contested the complaint by filing written statement raising the preliminary objections that the complainant is not a consumer within the meaning of section

2(1)(d) of the Act, 1986 as the unit in question is a commercial shop and that the complaint is barred by limitation.

7. After appreciation of the facts of the case, the State Commission accepted the complaint and directed the builder company to give possession of the shop in question to the complainant along with Rs. 5/- sq. ft. of the super area per month. The State Commission also awarded interest at the rate of 12% per annum on the deposited amount of Rs.22,00,000/- from 30.10.2012 till realization along with compensation of Rs. 2,00,000/- towards mental agony and Rs. 1,00,000/- towards litigation costs.

8. The builder company has filed the present appeal seeking setting aside of the State Commission's order dated 19.04.2021 before this Commission.

9. Before this Commission, the counsel for the builder company strongly argued that there is no locus for the complainant to have approached the State Commission. The very definition of the term "Consumer" given in Section 2(1)(d) of the Consumer Protection Act, 1986 (corresponding Section 2(7) of the Consumer Protection Act, 2019) lays down the fact that the commercial activity undertaken by the consumer is indeed within the purview of the Consumer foras if the stated activity is pursued for self-employment. It was submitted that the complainant is a resident of Kundli, Sonapat, Haryana but has booked a commercial shop despite already having a fully functioning boutique, which clearly indicates expansion of the commercial activities and in the interest of multiplying her profits. He further argued that the complainant resides much farther from the shop and she can never operate the shop in question by herself. In support of this contention, he placed reliance on the judgment rendered in the case of **Rohit Chaudhary and Anr. vs. M/s Vipul Ltd. [2023 INSC 807]**. The Apex Court has clearly substantiated that the commercial shop which is being procured has to be operated by the purchaser himself for self-sustenance.

10. Further, it was argued that granting of relief under multiple heads is not sustainable in the eye of law. In support of this contention, he placed reliance on the decision rendered in the case of **DLF Homes Panchkula Private Limited v. D.S. Dhanda and others (2020) 16 Supreme Court Cases 318** wherein it has been held that multiple compensations for singular deficiency is not justifiable.

11. Further, it was argued that interest at the rate of 12% per annum granted by the State Commission is on the higher side and in support of this contention, he placed reliance on the decision rendered in the case of **Wing Commander Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd., (2020) 16 SCC 512.**

12. The counsel for the complainant stated that Article 4.1 of the Buyer Agreement clearly stipulates that the buyer shall receive possession of the apartment within twenty-four months of the complex's building plans being approved, with an extra six months of grace, if necessary. It was further submitted that the building plan was sanctioned even prior to the signing of the buyer's agreement as the construction been started in the year 2006-2007, so it clearly stipulates that the delivery of the possession would duly start from the date of signing the Buyer Agreement between the parties, i.e. from 29.04.2010. The complainant earnestly paid 80% of the total purchase amount within the stipulated timeline, hoping to acquire possession on 29.04.2012 and for the same. It is pivotal to mention that the builder company

made a false promise of possession and failed to perform their liability/responsibility. The builder company's failure to deliver the possession of shop within the promised period significantly affects the complainant's rights and interests as a consumer. It is evident that there has been an unfair trade practice and a deficit in service. 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. This feature/aspect is consistent with the legal precedents set by this Hon'ble Commission in the following cases:

- a. *Emaar MGF Land Limited & Anr.v. Karnail Singh, 2014 SCC OnLine NCDRC 332,*
- b. *Mukesh Kumar Gupta & Ors u. Shreeniwas Cotton Mills Limited 2023 SCC OnLine NCDRC 298*
- c. *Arifur Rahman Khan and Ors. Vs. DLF Southern Homes Pvt. Ltd. and Ors*

13. The question which falls for our consideration is whether there is deficiency in service on the part of the builder company.

14. With regard to the contention of the builder company that the complainant has no locus standi as a consumer and the said shop is purchased by the complainant for commercial purpose, it is seen that it is not clear whether the boutique is running at home or at the shop. A self-employed person may have multiple sources of income and remain self-employed. Secondly, coming to the contention of the builder company that the complainant booked two properties, one residential and one shop, holds no merit as buying a residential property and a shop does not prove that the unit in question was purchased for commercial purpose. Thirdly, regarding the contention of the builder company that the complainant resides much farther from the shop in question and she cannot operate it herself, lacks merit as the shop is bought by her and her son and she can commute for the same and it might be that this shop is an arrangement for her son's self-employment. Moreover, even if she employs one or two people in her shop, she still falls within the ambit of self-employment and holds strong locus as a consumer within the Act 1986. Therefore, the above contentions of the builder company hold no ground in light of facts and circumstances of the case. Additionally, the onus to prove that the complainant bought the flat for commercial purpose is on the builder company and they have led no evidence on record in support of their contention. Reliance is placed on *Kavita Ahuja Vs. Shipra Estate Ltd. and Jai Kishan Estate Developers Pvt. Ltd. I (2016)CPJ 31(NC)*. Therefore, this contention of the builder company is rejected.

15. It is not in dispute that the said shop was booked by the complainant for total sale consideration of Rs.27,50,000/- and she had paid a total amount of Rs.22,00,000/-. It is also not in dispute that the buyers agreement was executed between the parties on 29.04.2010 and as per buyers agreement, the possession of the shop was to be delivered within a period of 24 months plus 06 months grace period i.e. by 24.10.2012. It is seen that more than 14 years from the date of buyer agreement had lapsed but the builder company has not given possession of the shop till date.

16. In light of the above, it is proved that the builder company has failed to fulfil its service obligations to the complainants. The builder company despite assurances regarding the completion timeline of the shop's construction could not deliver and withheld the complainants' funds for approximately 14 years. Thus, it is clear that the builder company

failed to deliver possession of the shop within the agreed and assured period. We are of the opinion that all these constitute deficiency in service on the part of the builder company.

17. As regards the multiple compensation is concerned, the Hon'ble Supreme Court in the case of ***DLF Homes Panchkula Pvt. Ltd. vs. D.S. Dhanda***, in CA Nos. 4910-4941 of 2019 decided on 10.05.2019 has held that multiple compensations for singular deficiency is not justifiable. Therefore, the award of compensation of Rs.2,00,000/- for mental agony and harassment granted by the State Commission is found to be not tenable.

18. As regards the rate of interest, we are of the view that the complainant is entitled to get compensation in the form of simple interest at the rate of 6% per annum on the amount deposited of Rs.22,00,000/- from the promised date of possession till the actual date of handing over of the possession. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of ***Wing Commander Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd., (2020) 16 SCC 512*** wherein it was held as:

“54. The general appreciation in land values results in an increase in the value of the investment made by the buyers. Difficulties in determining the measure of compensation cannot however dilute the liability to pay. A developer who has breached a clear representation which has been made to the buyers of the amenities which will be provided to them should be held accountable to the process of law.”

“69.1.the first and second respondents shall, as a measure of compensation, pay an amount calculated @ 6 per cent simple interest per annum to each of the appellants. The amount shall be computed on the total amounts paid towards the purchase of the respective flats with effect from the date of expiry of thirty-six months from the execution of the respective ABAs until the date of the offer of possession after the receipt of the occupation certificate.”

19. In view of the above, the order dated 19.04.2021 of the State Commission is modified to the extent that:

- a. The builder company shall hand over the possession of the shop in question to the complainant complete in all respects after receiving the balance amount due from the complainant.
- b. The complainant shall pay all dues as per agreement at time of taking possession.
- c. The builder company shall pay delay compensation on the deposited amount at the rate of 6% p.a. from the promised date of possession till the date of handing over of the possession within a period of 08 weeks, failing which the rate of interest shall be enhanced to 9%.
- d. The builder company shall pay Rs.1,00,000 to the complainant as cost of litigation.
- e. The amount of Rs.2,00,000/- awarded by the State Commission towards compensation for mental agony and harassment suffered by complainant is set aside.

20. The appeal is disposed of in above terms. All pending applications, if any, stand disposed of.

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**SUBHASH CHANDRA
PRESIDING MEMBER**

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**DR. SADHNA SHANKER
MEMBER**