

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

Date of Institution: 30.03.2021

Date of hearing: 18.09.2024

Date of Decision: 18.11.2024

COMPLAINT CASE NO.- 77/2021

IN THE MATTER OF

MS. PRIYA SACHDEV,

D-29, SOUTH EXTENSION,

PART-II, NEW DELHI-110049.

(Through: Singhania & Associates)

...Complainant

VERSUS.

M/S RAHEJA DEVELOPERS PVT. LTD.,

REGISTERED OFFICE AT:

W4D, 204/5, KESHAV KUNJ

CARIAPPA MARG, WESTERN AVENUE,

SAINIK FARMS, NEW DELHI-110062.

CORPORATE OFFICE AT:

215-216, RECTANGLE ONE,

D-4, DISTRICT CENTRE, SAKET,

NEW DELHI-110017.

(Through: Mr. Siddharth Banthia, Advocate)

...Opposite Party

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)****HON'BLE MS. PINKI (JUDICIAL MEMBER)****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 the Opposite Party and has prayed the following reliefs:
 - a. *"An Order directing the Opposite Party-Builder to fetch payment of Rs. 1,77,81,106.00.00 (Rupees One Crore Seventy-Seven Lac Eighty-One Thousand One Hundred & Six) as per tabulation forming part of paragraph no. 16 above towards refund of principal outstanding plus interest at 9% per annum from date of respective payments until date of institution of Complaint;*
 - b. *An order awarding pendentelite & future interest at rate of 9% per annum until realization;*
 - c. *An order awarding damages in the sum of ₹10,00,000.00 (being Rupees Ten Lac only) in lieu of mental pain and agony suffered by the complainant;*
 - d. *Awarding litigation cost to the complainant & such further orders) as may be deemed just & fit in facts & circumstances of the present case."*
2. The brief facts necessary for the adjudication of the present complaint are that on 11.08.2012 the Complainant booked a residential plot with the Opposite Party in the township "Raheja's Aranya City" situated at Sector 11 & 16, Gurgaon, Haryana and paid a sum of Rs.8,68,680/- subsequently, the Complainant was allotted a plot bearing no.28 in Block E. Further, a Builder Buyer Agreement was executed between the parties vide Agreement dated 07.01.2013. The Opposite Party assured the Complainant that the

period of completion/development of 36 months from the date of execution of agreement and the Complainant opted for construction linked payment plan. Further, on 16.01.2015 the Complainant's Application confirming provisional allotment of the subject plot was rejected due to lack of payment of subsequent instalments and sum paid towards earnest money was forfeited by the Opposite Party Builder. Thereafter, the Complainant made request for restoration of allotment vide dated 18.02.2017 directing the Complainant to pay Rs.27,43,288/- towards missed instalments due & interest in delayed payment among others, which was paid by the Complainant.

3. The Complainant sent various emails to execute the Conveyance Deed but no satisfactory response was given by the builder. The Complainant sent a legal notice dated 21.06.2018 asking to withdraw the demand of Rs.14,29,970/- towards the interest due and execution of conveyance deed and refund in case of failure to respond or act in terms above. It is further submitted that the last construction update by the Opposite Party in the year 2021 clearly shows that the Plot offered to be sold were nowhere near completion or habitable. Aggrieved by this, the Complainant approached this Commission alleging deficiency in service on the part of the Opposite Party.
4. The Opposite Party has contested the present case and contended that the Complainant is not consumer under the Consumer Protection Act, 2019 as the Complainant invested the money to earn profit, which amounts to commercial purpose. The counsel for the Opposite Party further submitted that the present Complaint is barred by limitation. He also submitted that the delay in the possession was due to the reasons beyond the control of Opposite

Party i.e. the possession has been offered upon receiving the Completion certificate therefore, the relief is not tenable.

5. The Complainant has 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.
6. The Opposite Party has submitted their written arguments, which primarily rely on the judgment delivered by the Hon'ble Supreme Court in the case of *Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna (Civil Appeal No. 5785 of 2019)*. The Opposite Party refers to this judgment to support their stance, citing the legal principles or precedents established in the case that may apply to the present matter.
7. The Complainant has also filed their written arguments, which have been duly perused and considered. These arguments present the Complainant's position and may address or counter the points raised by the Opposite Party.
8. We have perused the material available on record and heard the counsel for the parties.
9. The fact that the Complainant was allotted a plot bearing no. E28 with the Opposite Party is evident from the Allotment Letter dated 07.01.2013 (***Annexure C-2 with the present complaint***). Payment to the extent of Rs. 1,10,21,649/- by the Complainant to the Opposite Party is also evident from the copies of Payment Receipts and ledger statement issued by the Opposite party Builder attached with the complaint (***Annexure C-5***).
10. The ***first issue*** which needs our adjudication is ***whether the Complainant falls in the category of 'consumer' provided by the***

Consumer Protection Act, 2019. The Opposite Party contended that the Complainant is not *Consumer* as defined under the Consumer Protection Act, 2019 as it invested the money to earn profit, which amounts to commercial purpose. It is imperative to refer to the dicta of the Hon'ble National Commission in **CC-1122/2018** titled **Narinder Kumar Bairwal and Ors. vs. Ramprastha Promoters and Developers Pvt. Ltd. and Ors.** decided on **01.11.2019**, wherein, the Hon'ble National Commission has held as under:

“19. The contention of the Learned Counsel that the said Flats were purchased for commercial purpose is not supported by any documentary evidence as the onus shifts to the Opposite Parties to establish that the Complainant have purchased the same to indulge in 'purchase and sale of flats' as was held by this Commission in Kavit Ahuja vs. Shipra Estates I (2016) CPJ 31. The Opposite Parties failed to discharge their onus and we hence hold that the Complainant are 'Consumers' as defined under Section 2(1)(d) of the Act.”

11. From the aforesaid dicta of the Hon'ble National Commission, it flows that it is for the Opposite Party to prove that the plot purchased was for commercial purpose, by way of some documentary proof and a mere bald statement is not sufficient to raise adverse inference against the Complainant.
12. In the present case, the Opposite Party has merely made a statement that the Complainant purchased the plot for commercial purpose and on perusal of the record before us, we fail to find any material which shows that the Complainant is engaged in the business of purchasing and selling houses and/or plots on a regular basis, solely with a view

to make profit by sale of such flats/plots. Mere allegation, that the purchase of the property is for commercial purpose, cannot be the ground to reject the present consumer complaint. Consequently, the objection raised on behalf of the Opposite Party is answered in the negative.

13. The first issue before us is ***whether the present complaint is barred by law of limitation.***
14. It is imperative to refer to Section 69 of the Consumer Protection Act, 2019 wherein it is provided as under:-

“69. 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.”

15. Analysis of Section 69 of the Consumer Protection Act, 2019 leads us to the conclusion that this Commission is empowered to admit a complaint if it is filed within a period of 2 years from the date on which cause of action has arisen. We further deem it appropriate to refer to **Mehnga Singh Khara 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.”*

16. Returning to the facts of the present case, it is clear that the possession of the plot in question is still not handed over by the Opposite Party to the Complainant. Applying the above law, it is clear that the Complainant has a recurrent cause of action to approach this commission till the possession of the plot is not handed over to them.
17. The ***last issue*** which is to be adjudicated 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.

18. In the present case, the Complainant contended that Opposite Party assured him to hand over the possession of the said plot on or before 36 months from the date of execution of the Builder Buyer Agreement dated 07.01.2013. However, the Opposite Party failed to handover the possession of the said plot within the stipulated time period.
19. We also deem it appropriate to refer to ***Aashish Oberai vs. Emaar MGF Land Limited*** reported in I (2017) CPJ 17 (NC), wherein the Hon'ble National Commission has held as under:

"I am in agreement with the learned senior counsel for the Complainant that considering the default on the part of the Opposite Party in performing its contractual obligation, the Complainant cannot be compelled to accept the offer of possession at this belated stage and therefore, is entitled to refund the entire amount paid

by him along with reasonable compensation, in the form of interest.”

20. 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 the time for handing over the possession of the said plot and kept the hard-earned money of the Complainant. Therefore, now the Complainant are not bound to take the possession of the said plot after the stipulated period.
21. 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. 1,10,21,649/-** 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 **18.11.2024** (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 **18.01.2025**;
 - 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 **18.01.2025**, 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.

22. 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. 5,00,000/- as cost for mental agony and harassment to the Complainant; and
 - B.** The litigation cost to the extent of Rs. 50,000/-.
23. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
24. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
25. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
JUDICIAL MEMBER

Pronounced On:
18.11.2024

L.R.SM