IN THE DELHI STATE COMSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 10.07.2018

Date of hearing: 20.09.2024

Date of Decision: 21.11.2024

COMPLAINT CASE NO. – 875/2018

IN THE MATTER OF:
MR. R.P. PHULIA,
S/O MR. MANPHOOL SINGH,
R/O H.NO. FF-3419-A,
HBC, PHASE – III, SECTOR-15,
SONEPAT, HARYANA.
ALSO, AT: -
R.P. PHULIA,
HGA,
LIC OF INDIA, DELHI DIVISIONAL OFFICE – I,
JEEVAN PRAKASH,
25 KASTURBA GANDHI MARG,
NEW DELHI – 110001.

(Through: Ms. Arti Pushkar, Advocate)

… Complainant

Versus

1. **THE DIRECTOR/A.R.,**

   TDI INFRACORP LTD.,

   UG FLOOR, VANDANA BUILDING,

   11, TOLSTOY MARG, CONNOUGHT PLACE,

   NEW DELHI – 110001.

(Through: Mr. Pradeep Singh and

Mr. Vinit Virmani, Advocates)

…Opposite Party no.1

2. **MR. AMRIK SINGH,**
   TANEJA & CO. PRIVATE LTD.,
   209, ANSAL CLASSIC TOWER,
   OPP. SURYA HOTEL, RAJOURI GARDEN,
   NEW DELHI – 110027.

3. **DEEPAK KUMAR,**
   TANEJA & CO. PRIVATE LTD.,
   209, ANSAL CLASSIC TOWER
   OPP. SURYA HOTEL, RAJOURI GARDEN,
   NEW DELHI – 110027.

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

Present: Mr. R.P. Pushkar, elder brother of complainant.
Ms. Arti Pushkar,counsel for complainant.
Mr. Vinit Virmani, counsel for OP appeared on VC

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

JUDGMENT:

1. The present complaint being returned by the District Commission vide order dated 18.04.2018, on the ground of lack of pecuniary jurisdiction, filed by the Complainant before this commission alleging deficiency of service on the part of the Opposite Parties and has prayed the following reliefs:

   "i. Direct to opposite parties to release the booking amount of Rs. 3,50,000/- and well as Rs. 5618/- received by the opposite party with assurance to provide/sanction the 90% loan of sale amount of the flat under project booked by the complainant, alongwith interest @ percent per annum to the applicant
   ii. Direct the opposite parties to pay a sum of Rs. 1,00,000/- towards the compensation as per mental, financial suffering due to deficiency in service.
   iii. To pay an amount Rs. 50,000/- towards the litigation charges.
   iv. Pass any other or further order (s) which this Hon ble Forum deems fit & Proper in favour of the applicant."

2. Brief facts necessary for the adjudication of the present complaint are that the Complainant booked a residential apartment measuring 1170 sq. ft. on the 9th floor in the project 'TDI Lake Side Heights' of the Opposite Parties, situated in Kundli, Sonepat, Haryana. The Opposite Parties assured the Complainant that only 10% of the basic sale price of the said apartment needed to be paid upfront, and for the remaining 90%, the Opposite Parties assured the granting/providing of a loan to the Complainant for the said apartment. Accordingly, the Complainant, vide cheque no. 431550 dated 31.07.2013, paid the booking amount of ₹3,50,000/-, which was 10% of the basic sale price of the said apartment. The Complainant also deposited the loan processing charges of ₹5,618/- as demanded by the Opposite Parties.

However, the Opposite Parties failed to provide/sanction any loan for the remaining 90% of the amount. Therefore, the Complainant sent a legal notice dated 05.06.2014 to Opposite Party No. 1, seeking a refund of the amount paid by him, but to no avail. Thus, the Complainant approached this Commission, alleging deficiency in services on the part of the Opposite Parties.

3. The Opposite Party no.1 has contested the present case and raised preliminary objections regarding the maintainability of the complaint. The counsel for the Opposite Party no.1 submitted that the Complainant is not a ‘consumer’ under the Consumer Protection Act, 1986, as the Complainant is merely a speculative investor who purchased the said apartment for investment purposes. He further submitted that the Complainant failed to show any cause of action against the Opposite Party.

4. The counsel for the Opposite Party no.1 further submitted that the Complainant defaulted in making payments towards the said apartment as per the agreed terms. The Complainant was required to pay 10% of the basic price of the said apartment for the allotment but only paid ₹3,50,000/-, which amounts to 8.14% of the basic sale price. Moreover, the Opposite Party no.1 sent various demand letters and reminders dated 18.10.2013, 09.01.2014, 20.02.2014, 25.03.2014, 24.05.2014, 26.07.2014, 30.08.2014, 01.08.2014, 14.11.2014, and a final reminder dated 26.11.2014, asking the Complainant to make the remaining payment of 90%. However, the Complainant failed to make any payment towards the said apartment despite these reminders. Therefore, there is no deficiency on the part of the Opposite Party no.1, as the Complainant failed to fulfil his obligation of timely payment. Pressing the aforesaid contentions, the counsel appearing on behalf of the Opposite Party no.1 prayed that the present complaint should be dismissed.

5. The Complainant has filed the Rejoinder rebutting the written statement filed by the Opposite Party no.1. Both the parties have filed their Evidence by way of Affidavit in order to prove their averments on record.
6. The Complainant has filed written arguments, reiterating the allegations and grievances already stated in the complaint, primarily focusing on not refunding the amount deposited by him towards the said apartment.
7. On the other hand, the Opposite Party has also filed written arguments, repeating the contentions raised in its written statement.
8. We have perused the material available on record and heard the counsel for the parties.
9. The fact that the Complainant had booked an apartment with the Opposite Party no.1 is evident from the registration form dated 25.07.2013. Payment to the extent of Rs. *3,50,000*/- by the Complainant to the Opposite Party no.1 is not disputed by the Opposite Party.
10. 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.”

11. 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 apartment in question 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.”*

12. 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.

13. The ***second question*** for consideration before us is ***whether the Complainant fall under the category of ‘consumer’ defined under the Consumer Protection Act, 1986?***

14. The Opposite Party no.1 contended that the Complainant is not *Consumer* as defined under the Consumer Protection Act, 1986 as the Complainant invested the money to earn profit, which amounts to commercial purpose. To resolve this issue, we deem it appropriate to

refer to ***Aashish Oberai Vs Emaar MGF Land Limited*** reported in ***I (2017) CPJ 17(NC)*** wherein it is held as under:

> *"6. …….A person **cannot be said to have purchased a house for a commercial purpose only by proving that he owns or had purchased more than one houses or plots**. In a given case, **separate houses may be purchased by a person for the individual use of his family members**. A person owning a house in a city A may also purchase a house in city B for the purpose of staying in that house during short visits to that city. A person may buy two or three houses if the requirement of his family cannot be met in one house. Therefore, it would not be correct to say that in every case where a person owns more than one house, the acquisition of the house is for a commercial purpose.*"

15. 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."*

16. From the aforesaid dicta of the Hon'ble National Commission, it is for the Opposite Party no.1 to prove that said apartment 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.

17. In the present case, the Opposite Party no.1 has merely made a statement that the Complainant purchased the said apartment for commercial purpose but fail to provide any material which shows us that the Complainant is engaged in the business of purchasing and selling houses and/or plots on a regular basis, solely with view to make profit by sale of such apartment. 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 no.1 is answered in the negative.
18. Having discussed the preliminary objections raised on behalf of the Opposite Party no.1, the next issue which arises is ***whether the Opposite Party no.1 is actually deficient in providing its services to the Complainant***.
19. The counsel for the Opposite Party no.1 submitted that the Complainant defaulted making payment towards the said apartment despite various demand letters and reminders dated 18.10.2013, 090.01.2014, 20.02.2014, 25.03.2014, 24.05.2014, 26.07.2014, 30.08.2014, 01.08.2014, 14.11.2014 and final reminder dated 26.11.2014 to make remaining payment of 90%.
20. 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.*

21. 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"

22. On perusal of the record, it is noted that the Complainant booked an apartment through an application dated 25.07.2013 by making an advance payment of ₹3,50,000/- to the Opposite Party no.1 towards the said apartment. Although there is no evidence on record to suggest that the Opposite Party was obligated to facilitate the loan but it is evident from the annexure at page 21 of the complaint that the Opposite Party no.1 requested documents such as a PAN card and residence proof from the Complainant for securing the loan. Moreover, it is clear from the record that the Complainant had opted for a subvention loan scheme and intended to pay the remaining 90% of the amount through the loan. However, no loan was sanctioned, either by the Opposite Party no.1 or by the Complainant independently.

23. Consequently, the Complainant, vide letter dated 21.11.2013, requested the Opposite Party no.1 to refund the advance payment. It is pertinent to note that this letter was sent merely four months after the date of the registration form. However, the Opposite Party no.1 neither replied to the Complainant's letter, nor did it cancel the allotment, which it could have done under the circumstances.

24. Instead of cancelling the booking, the Opposite Party no.1 continued to send demand letters for almost a year, i.e., until 26.11.2014, demanding the Complainant clear the outstanding dues with interest, despite the fact that the booking could have been cancelled after one or two defaults. As a result, the Complainant vide letters dated 13.03.2014 and 31.03.2014, again requested the Opposite Party no.1 to refund the registration fees and stop issuing demand letters. However, we failed to find any evidence that the Opposite Party no.1 addressed the grievance of the Complainant or taken any steps to resolve the issue.
25. Additionally, we find term and condition 5 of the said registration wherein it is mentioned that ***"If applicant wishes to withdraw the application before the allotment, the withdrawal shall be subject to the deduction of 50 % of the entire amount received by the company that time"***
26. Therefore, it is evident that the Opposite Party no.1 could have cancelled the booking and refunded the amount after deducting the stipulated charges, but instead, it continued to impose interest and failed to address the Complainant's grievance.
27. Additionally, the complainant also alleged that he is entitled to a refund of an amount of Rs. 5618/-, which was paid by him to the Opposite Party no.1 for securing a loan. However, it is evident from the records that the complainant made this payment to an entity named "Tata" and not to the Opposite Party no.1. Therefore, this amount cannot be claimed from the Opposite Party no.1.
28. Based on the above discussion, we hold that the Opposite Party no.1 is deficient in service for failing to refund the amount as per Term and Condition No. 5 of the registration form.

29. Keeping in view the facts of the present case, we direct the Opposite Party no.1 to refund the entire amount paid by the Complainant i.e., ***Rs.* 1,75,000/- [50% of the total amount deposited by the Complainant]** along with simple 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 no.1 till **21.11.2024** (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 no.1 pays the entire amount on or before **21.01.2025**;

    C. Being guided by the principles as discussed above, in case the Opposite Party no.1 fails to refund the amount as per the aforesaid clause **(A)** on or before **21.01.2025**, 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 no.1 till the actual realization of the amount.

30. In addition to the aforesaid and taking into consideration the facts of the present case, the Opposite Party no.1 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/-.

31. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

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

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:

21.11.2024

LR-ZA