

IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION

Date of Institution: 19.09.2018

Date of Hearing: 17.09.2024

Date of Decision: 29.11.2024

COMPLAINT CASE NO.- 1231/2018

IN THE MATTER OF

MR. RAMAN SINGLA,
S/O MR. SURESH SINGLA,
ID: KFL-10665,
C/O SHINGLA CARPETS,
G.T. ROAD, PANIPAT-132103.

(Through: R.K. Mehta & Co.)

...Complainant

VERSUS

- 1. M/S TDI INFRASTRUCTURE LTD.,**
THROUGH ITS MANAGING DIRECTOR,
UG FLOOR, VANDANA BUILDING, 11,
TOLSTOY MARG, CONNAUGHT PLACE,
NEW DELHI-110001.
- 2. MR. KAMAL TANEJA,**
MANAGING DIRECTOR,
TDI INFRASTRUCTURE PVT. LTD.
UG FLOOR, VANDANA BUILDING, 11,
TOLSTOY MARG, CONNAUGHT PLACE,
NEW DELHI-110001.

(Through: Mr. Vaibhav Agnihotri, Advocate)

...Opposite Parties

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

Present: Mr. Kunal Mehta, counsel for the Complainant.
Mr. Abhishek Das, proxy counsel for Mr. Vaibhav Agnihotri,
counsel for the OP.

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

JUDGMENT

1. The present complaint, on being returned from the District Commission vide order dated 24.08.2018, has been filed by the Complainant before this Commission alleging deficiency of service on the part of Opposite Parties and has prayed the following reliefs:

- I. *“to direct the respondents to allot a flat of 1110 sq. ft. in its "Kingsbury" Project or of similar Project at TDI, Kondli, Sonepat at the rate of booking made in the year 2005; or in the alternative;*
- II. *to direct the respondents to pay an amount of Rs.17,50,000/- to the complainant which he would have become entitled to in the event of fulfillment of the obligations by the respondents on the basis of the booking of the said Flat No. G7- 0704 in the "Kingsbury at TDI City, Kundli", having an area of 1100 sq. ft. as early as in the year 2007;*
- III. *to direct the respondents to pay the interest on the said amount at the rate of 18 per cent per annum;*
- IV. *to direct the respondents to pay damages to the tune of Rs.2,00,000/- towards mental tension, torture, humiliation suffered by the complainant and further depriving the complainant of living in his dream house on the basis of the said book with the respondent-Company.*
- V. *to pay cost of the proceedings to the tune of Rs.20,000/-.*
Such other and further relief which this Hon'ble forum may deem fit and proper be also granted in favour of the complainant and against the Respondents/Opposite party.”

2. Brief facts necessary for the adjudication of the present complaint are that on 29.07.2005, the Complainant booked a flat and deposited an amount of Rs. 3,00,000/- in the project '*Kingsbury*' of the Opposite Parties situated at TDI City Kundli, Sonapat, Haryana. Thereafter, the Opposite Parties vide letter dated 01.09.2007, allotted a flat bearing no. G7-0704 having an area of 1110 sq. ft. in the aforementioned project to the Complainant. The Complainant had paid an amount of Rs. 6,58,500/- to the Opposite parties as and when demanded by them. Further, the Opposite Parties raised a demand of Rs. 2,92,152/- vide letter dated 07.09.2010, however, during that period, Complainant visited the project site and found that the Opposite Parties had not even laid a single brick for raising the construction of said project. Also, the Opposite Party no. 1 vide letter dated 05.08.2011 intimated the Complainant that the construction of the tower in which the flat was allotted to the Complaint had been delayed due to unavoidable circumstances and offered alternate flat in Tower S/W in which the construction was going on with full swing, however the Complainant refused to accept the offer as already more than six years were passed from the date of booking and the Opposite Parties failed to handover the possession of the said flat even after six years from the date of booking despite repeated enquires from the Complainant. Aggrieved by this, the Complainant approached this Commission alleging the deficiency of service on the part of Opposite Parties.
3. The Opposite Parties have contested the present case and raised preliminary objections as to the maintainability of the complaint case. The counsel of the Opposite Parties contended that the Complainant is not consumer under the Consumer Protection Act, 1986 as the Complainant invested the money in real estate to earn profit. The counsel of the Opposite Parties further submitted that the Complainant has defaulted in making due payments for the said flat. Pressing the aforesaid contention and submission, the counsel

appearing on behalf of the Opposite Parties prayed for dismissal of the present complaint.

4. The Complainant has filed the Rejoinder rebutting the written statement filed by the Opposite Parties. Both the parties have duly filed their Evidence by way of Affidavit in order to prove their averments on record.
5. The written Arguments on behalf of the Complainant and Opposite Parties are on record and the same has been considered.
6. We have perused the material available on record and heard the counsel for the parties.
7. The fact that the Complainant had booked a flat with the Opposite Parties is evident from the letter dated 01.09.2007 (***Annexed as Annexure-C***). Payment to the extent of Rs. 6,58,500/- by the Complainant for the said flat is not disputed by the Opposite Parties.
8. The ***first question*** for consideration before us is ***whether the Complainant fall under the category of 'consumer' provided by the Consumer Protection Act, 1986***. To comment on 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.”

9. 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 Kavita 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.

10. From the aforesaid dicta of the Hon’ble National Commission, it flows that it is for the Opposite Parties to prove that the land/plot was purchased for commercial purpose, by way of some documentary proof and a mere bald statement is not sufficient to raise adverse inference against the Complainant.
11. In the present case, the Opposite Parties have merely made a statement that the Complainant purchased the land 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. 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 Parties is answered in the negative.
12. The **next question** for consideration before us is **whether the Opposite Parties are 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.

13. On perusal of record, we do not find any document/ evidence which shows us the stipulated time within which the possession of the said land was to be handed over by the Opposite Parties. However, it is appropriate to refer to the recent pronouncement of Hon'ble National Commission in the case of ***"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.”

14. The aforesaid dicta make it clear that if the possession is delivered beyond 42 or 48 months by the builder, then the deficiency on the part of the builder stand proved. In the present case, the Opposite Parties failed to hand over the possession of the said flat till date. Therefore, the deficiency on the part of the Opposite Parties stands proved.
15. Keeping in view the facts of the present case and the extensive law as discussed above, we direct the Opposite Parties to refund the entire amount paid by the Complainant i.e., **Rs. 6,58,500/-** 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 Parties till **29.11.2024** (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 Parties pays the entire amount on or before **29.01.2025**;
 - 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 **29.01.2025**, 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 Parties till the actual realization of the amount.
16. In addition to the aforesaid and taking into consideration the facts of the present case, the Opposite Parties are 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/-.

17. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
18. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
19. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)

PRESIDENT

(PINKI)

MEMBER (JUDICIAL)

Pronounced On:
29.11.2024

LR-AJ