

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-VI
(NEW DELHI), 'M' BLOCK, 1STFLOOR, VIKAS BHAWAN,
I.P.ESTATE, NEW DELHI-110002**

Case No. CC/469/2024

IN THE MATTER OF:

Sh. Abhishek Pandey

S/o Anil Kumar Pandey,
C/o 312, 3rd Floor Ansal Bhawan,
K.G. Marg, Connaught Place,
New Delhi-110001

....Complainant

Versus

Magic Eye Developers Pvt. Ltd.

Registered Office
GF-09, Plaza M-6,
District Centre Jasola,
New Delhi-110025
Through its MD/Chairman

....Opposite Party

Quorum:

Ms. Poonam Chaudhry, President

Shri Bariq Ahmad, Member

Shri Shekhar Chandra, Member

Date of Institution: 23/12/2024

Date of Order: 17/11/2025

ORDER**BARIQ AHMAD, MEMBER**

1. The present complaint is filed under Section 35 of the Consumer Protection Act, 2019 (hereinafter referred to as the “*CP Act*”) against the Opposite Party (hereinafter referred to as the “*OP*”), alleging deficiency in service, unfair trade practice, and failure of service.
2. It is stated that the Complainant is a “Consumer” as defined under Section 2(7) of the CP Act, 2019, having hired the services of the Opposite Party for consideration in respect of a residential unit.
3. Brief Facts of the Case are that the Opposite Party launched a real estate project known as “The Plaza at 106”, situated at Sector 106, Gurugram, Haryana. The Complainant booked a 1 BHK Studio Apartment measuring approximately 700 sq. ft. (super area) in the said project, which was being developed by the Opposite Party.
3. It is stated that the Complainant has made total payments amounting to ₹12,30,641/- (Rupees Twelve Lakh Thirty Thousand Six Hundred Forty-One Only) towards the said unit.

4. It is submitted that the unit was booked for the Complainant's personal use and livelihood purposes. As per the understanding, the possession of the unit was to be delivered by April 2016 (i.e., within 36 months + 6 months + 6 months grace period). However, despite the lapse of several years, the project has been inordinately delayed for reasons best known to the Opposite Party.
5. It is stated that due to the inordinate delay, the Complainant repeatedly requested the Opposite Party to refund the amount paid along with interest. Despite several reminders, the Opposite Party neither responded nor refunded the money. Instead, the OP issued an antedated Final Reminder-cum-Pre-Cancellation Letter dated 30.01.2021 confirming the receipt of ₹12,30,641/-.
6. It is alleged that to date, no Buyer's Agreement (BBA) has been executed between the parties. The Complainant subsequently came to know that the Opposite Party unilaterally cancelled the unit allotted to the Complainant and sold the same to another entity, amounting to unfair trade practice, deficiency in service, and wrongful gain to the Opposite Party.
7. It is stated that the Opposite Party thereafter issued a Cancellation Letter dated 30.12.2022 with malafide intent, yet no refund has been made to the Complainant till date.

8. It is stated that the Complainant made several amicable efforts to resolve the dispute with the Opposite Party through personal visits, telephonic communications, and ultimately by issuing a Legal Notice dated 05.12.2024, which was duly served upon the Opposite Party. However, despite such efforts, no response or refund was received, thereby constraining the Complainant to file the present complaint before this Hon'ble Commission.
9. It is stated that the Complainant is a "Complainant" within the meaning of Section 2(5) of the Consumer Protection Act, 2019. This Hon'ble Commission has pecuniary jurisdiction as the value of the claim is below ₹50,00,000/-, and territorial jurisdiction as the Complainant is working for gain within the limits of this Hon'ble Commission **at** Connaught Place, New Delhi, where part of the cause of action also arose.
10. Being aggrieved by the arbitrary and unlawful actions of the opposite party, the complainant has preferred the present consumer complaint, praying for the following reliefs:
 - i. Direct the Opposite Party to refund a sum of ₹12,30,641/- (Rupees Twelve Lakh Thirty Thousand Six Hundred Forty-One Only) along with interest @12% p.a. from the respective dates of payment till actual realization;

- ii. Award compensation of ₹2,50,000/- towards mental agony, harassment, and inconvenience suffered by the Complainant due to the Opposite Party's acts of omission and commission;
- iii. Award litigation and incidental expenses amounting to ₹33,000/-; and
- iv. Pass such other or further orders as this Hon'ble Commission may deem just, fit, and proper in the facts and circumstances of the case.

11. Notice of the complaint was duly issued to the Opposite Party; however, the Opposite Party neither entered appearance nor filed its written statement. Consequently, the Opposite Party was proceeded ex parte, and its defence was struck off vide order dated 21.04.2025.

12. The Complainant filed his evidence by way of affidavit wherein he corroborated the contents of the complaint. In support of his case, the Complainant placed on record copy of reminder cum pre-cancellation letter dt.30.01.2021 Ex-C1/1, copy of cancellation letter dt.30.12.2022 ExC-1/2, copy of legal notice dt. 05/12/2024 alongwith postal receipt Ex C-1/3.

13. We have carefully perused the pleadings, documents, and arguments advanced by the learned counsel for both parties.

13. We have also carefully perused the pleadings, evidence, and documents placed on record by the Complainant. In his *ex-parte* evidence, the complainant has reiterated the averments and contentions made in the complaint.
14. The Opposite Party, despite due notice, failed to appear and was proceeded *ex parte* vide order dated 21.04.2025. Hence, the evidence led by the Complainant remains uncontroverted and unrebutted.
15. The Complainant has proved through his affidavit and documentary evidence (Ex.C-1/1 to C-1/3) that the Opposite Party. The Complainant booked a 1 BHK Studio Apartment (approx. 700 sq. ft.) in the said project “The Plaza at 106”, Sector 106, Gurugram, Haryana and paid a total sum of ₹12,30,641/-. Despite repeated requests, possession was not delivered, and no Builder Buyer Agreement (BBA) was executed. Instead, the Opposite Party issued an antedated Final Reminder-cum-Pre-Cancellation Letter dated 30.01.2021, and subsequently a Cancellation Letter dated 30.12.2022, without refunding the amount. The Complainant made several representations and served a Legal Notice dated 05.12.2024, but received no response or refund.

16. It was contended on behalf of the complainant that OP was deficient in providing services. The Complainant paid a total sum of ₹12,30,641/- (Rupees Twelve Lakh Thirty Thousand Six Hundred Forty-One Only) towards booking of a unit for personal use and livelihood purposes. As per the terms, possession was to be delivered by April 2016 (36 months + 6 months + 6 months grace period), but the project was inordinately delayed. Despite repeated requests and reminders, the Opposite Party neither refunded the amount nor responded; instead, it issued **an** antedated Final Reminder-cum-Pre-Cancellation Letter dated 30.01.2021 confirming receipt of the said payment. No Buyer's Agreement was ever executed, and the Complainant later discovered that the unit had been unilaterally cancelled and resold, constituting deficiency in service **and** unfair trade practice.

17. It is to be noted that, with regard to deficiency in service, the Hon'ble Supreme Court in *Arifur Rehman Khan & Ors. vs. DLF Southern Homes Pvt. Ltd. & Ors.*, (2020) 3 RCR (Civil) 544, held that failure of the builder to deliver possession of the flat within the stipulated period amounts to deficiency in service, entitling the allottee to appropriate relief under the Consumer Protection Act.

18. It was held in *Lucknow Development Authority vs. M.K. Gupta*, (1994) 1 SCC 243, by the Hon'ble Supreme Court that when a person hires the services of a

builder or contractor for construction of a house or flat and the same is not delivered within the stipulated time or is defectively constructed, such act amounts to deficiency in service within the meaning of the Consumer Protection Act, and the consumer is entitled to seek compensation for the loss or injury suffered.

19. After giving our careful thought to the arguments advanced by the Ld. Counsel for the complainant and upon perusal of the material on record, we are of the considered view that the Opposite Party has been deficient in rendering services to the Complainant, thereby entitling the Complainant to appropriate relief under the provisions of the Consumer Protection Act, 2019.

20. It is to be noted that Section 2(47) of the Consumer Protection Act, 2019 defines the term “unfair trade practice” as a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or deceptive practice, including any of the practices enumerated under clauses (i) to (ix) of the said section.

21. We deem it necessary to refer to the judgment of the Hon’ble Supreme Court in *Fortune Infrastructure & Anr. vs. Trevor D’Lima & Ors.*, (2018) 5 SCC 442, wherein it was held that a person cannot be made to wait indefinitely for possession of the flat, and the buyer is entitled to seek refund of the amount

paid along with appropriate compensation, if the builder fails to deliver possession within the stipulated period.

22. Applying the above precedents, this Commission finds that the Opposite Party has clearly indulged in unfair trade practice and deficiency in service by cancelling the allotment, reselling the unit and retaining the funds paid by the Complainant. In this regard, the judgment of the Hon'ble Supreme Court in *Fortune Infrastructure & Anr. vs Trevor D'Lima & Ors.*, (2018) 5 SCC 442, is binding: the Court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek a refund of the amount paid along with compensation.

23. Furthermore, in the more recent decision of *Pioneer Urban Land & Infrastructure Ltd. vs Govindan Raghavan* (2019) 5 SCC 725, the Supreme Court reaffirmed that the developer's obligation to deliver possession within the agreed or reasonable period is a condition of the "service" owed to the allottee, and a failure to do so amounts to deficiency in service.

24. In the facts of the present case, the Complainant paid a substantial amount of ₹12,30,641/-, no agreement for sale was executed, possession was not delivered by the contracted date of April 2016 (even allowing for grace periods) and the unit was cancelled and resold by the Opposite Party without refunding the Complainant. The Complainant has successfully established his case through

unrebutted evidence. Thus, the Opposite Party's conduct falls squarely within the scope of unfair trade practices as defined in Section 2(47) of the Consumer Protection Act, 2019, and amounts to deficiency in service under Section 2(11). Accordingly, the Complainant is prima facie entitled to the reliefs claimed.

25. Accordingly, the complaint is allowed in the following terms:

26. The Opposite Party is directed to refund to the Complainant a sum of ₹12,30,641/- (Rupees Twelve Lakh Thirty Thousand Six Hundred Forty-One Only) along with interest @9% per annum from the respective dates of payment till the date of actual realization.

27. The Opposite Party shall further pay to the Complainant a sum of ₹1,50,000/- (Rupees One Lakh Fifty Thousand Only) as compensation for mental agony, harassment, and inconvenience suffered due to its acts and omissions.

28. The Opposite Party shall also pay ₹33,000/- (Rupees Thirty-Three Thousand Only) towards litigation costs and incidental expenses.

29. The aforesaid amounts shall be paid within 45 days from the date of receipt of this order, failing which the entire amount shall carry interest @12% per annum from the date of default till actual payment.

30. The Opposite Party is further restrained from selling, transferring, or creating any third-party interest in respect of the unit originally allotted to the Complainant until compliance of this order.

31.A copy of order be sent to all the parties free of cost. The order be also uploaded in the website of the Commission (www.confonet.nic.in).

File be consigned to the record room along with a copy of the order.

(Poonam Chaudhry)
President

(Bariq Ahmad)
Member

(Shekhar Chandra)
Member