

IN THE DELHI STATE CONSUMER DISPUTES

REDRESSAL COMMISSION

Date of Institution: 15.03.2013

Date of Hearing: 17.09.2024

Date of Decision: 05.11.2024

COMPLAINT CASE NO.- 123/2013

IN THE MATTER OF

MR. IMROZ AHMAD KHAN,
R/O H. NO. 67 B EXPRESS VIEW APARTMENT,
SECTOR-93 NOIDA – 201304.

(Through: K. Rana & Company)

...Complainant

VERSUS

COSMOS INFRA ENGINEERING (I) LIMITED,
C-31/32 2ND FLOOR OPP. PVR PLAZA,
CONNAUGHT PLACE,
NEW DELHI – 110001.

(Through: Mr. Vikash Tomer, Advocate)

...Opposite party

CORAM:

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

Present: Mr. Arbaaz Khan, counsel for complainant appeared on VC.
Mr. Nimish Mishra, counsel for the OP.

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:

- “(i) The Respondent to be directed to waving of all illegal penalties and interest upon the complainant and restore allotment of flat no C-106 OF 3 BR Type on first floor at Tower no -C, in super area in 1700 Sq.ft. @ 1860 per Sq. ft. total sum of Rs 39,68,000.00/-to complainant., In the residential group housing project "COSMOS GOLDEN HEIGHTS" situated at N H 24, Crossing republic, N C R Ghaziabad, U.P.*
- (ii) The Respondent to be further directed to pay a sum of Rs 1,00,000/- as compensation for the mental agony and harassment caused to the Complainant.*
- (iii) Award cost legal notice and cost, expenses of the Complaint.*
- (iv) In alternate direction be given to the respondent refund the amount of Rs. 17,52,757/- as principal and interest @18% from February, 2008 till order of this Hon'ble State Commission.*
- (v) Pass any other order(s) as this Hon'ble Court deem fit and proper in the circumstances of the present case.”*

2. Brief facts necessary for the adjudication of the present complaint are as follows: the Complainant vide registration form dated 14.02.2008, booked an apartment in the project named **Cosmos Golden Heights** of the Opposite Party, situated at N.H. 24, Ghaziabad, Uttar Pradesh. Accordingly, the Opposite Party

vide an intimation for allotment letter dated 27.03.2008 along with an allotment letter outlining the terms and conditions, allotted apartment C-106 on the first floor in Tower C in the mentioned project to the Complainant. As per term and condition 16 of the allotment letter, the Opposite Party was to hand over possession of the said apartment within 36 months from the date of allotment. However, the Opposite Party failed to complete the construction within the prescribed period. Moreover, construction of the said apartment lagged significantly behind schedule. Therefore, the Complainant via email dated 04.04.2012 and letters dated 19.02.2013 and 23.02.2013, inquired about the possession status of the apartment. However, instead of providing an explanation for the delay, the Opposite Party arbitrarily canceled the allotment through a letter dated 21.02.2013. In response, the Complainant replied to the cancellation letter on 23.02.2013 and also visited the office of the Opposite Party to resolve the issue, but the Opposite Party failed to provide a satisfactory response.

The Complainant over the time had paid a total sum of Rs. 17,52,757/- to the Opposite Party as and when demanded. The Complainant also sent a legal notice dated 27.02.2013 to the Opposite Party, requesting a waiver of the illegal penalties and interest or alternatively, a refund of the amount along with interest but was of no avail.

3. The Opposite Party has contested the present matter and raised preliminary objections regarding the maintainability of the complaint. The counsel for the Opposite Party submitted that this commission lacks the pecuniary jurisdiction to adjudicate the present matter. He further submitted that the Complainant has no cause of action to file this complaint. The Opposite Party also submitted that that the present complaint involves complicated questions of fact and law which can only be decided by a civil court and are beyond the jurisdiction of this commission.

4. The counsel for the Opposite Party further submitted that the Complainant is guilty of *suggestio falsi* and *suppressio veri*, as the Complainant concealed material facts from this commission regarding timely payments toward the said apartment. He lastly submitted that the Complainant failed to disclose any deficiency on the part of the Opposite Party. Pressing the aforesaid objections, the counsel appearing on behalf of the Opposite Party argued that the present complaint be dismissed.
5. The Complainants have 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 Complainant has filed written arguments, reiterating the allegations and grievances already stated in the complaint, primarily focusing on the delay in possession and arbitrary cancellation of the allotment by the Opposite Party.
7. On the other hand, the Opposite Party has also submitted written arguments, repeating the contentions raised in their objections. They argue that the commission lacks jurisdiction, that the Complainant concealed material facts, and that there is no deficiency in service on their part, requesting the complaint be dismissed.
8. We have perused the material available on record and heard the counsel for the parties.
9. **The first question for consideration is whether this commission has pecuniary jurisdiction to adjudicate the present complaint?**
10. The Opposite Party contended that this commission does not have the pecuniary jurisdiction to adjudicate the present complaint. We deem it appropriate to refer to Section 17 of the Consumer Protection Act, 1986 which provides as under:

“(1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction—

(a) to entertain-

(i) complaints where the value of the goods or services and compensation, if any, claimed [exceeds rupees twenty lakhs but does not exceed rupees one crore]; and
(ii) appeals against the orders of any District Forum within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction-

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.”

11. Analysis of Section 17 of the Consumer Protection Act, 1986 leads us to the conclusion that this commission shall have the pecuniary jurisdiction in cases

where the total claim including the compensation is more than twenty lakhs and less than One Crore.

12. Having discussed the statutory position, the facts of the present case reflect that the value of the said apartment and the compensation prayed for by the complainant is beyond Rs. 20 Lakhs but does not exceed Rs. 1 Crore, accordingly, this commission has the pecuniary jurisdiction to deal with the present complaint.

13. **The second question for consideration before us whether the Complainant have cause of action to approach this commission?**

14. The next issue to be adjudicated is whether the complainants have 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.”

15. Perusing the above statutory provision of law, it is clear that the complaint shall be filed before the State Commission within two years from the date on which the cause of action has arisen. We further deem it appropriate to refer

to Mehnga Singh Khera and Ors. Vs. Unitech Ltd. 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. It is only when the seller virtually refused to give possession, that the period of limitation prescribed under section 24(A) of the Consumer Protection Act, 1986 would start. The Complainant has to file a case within two years from the date of refusal of delivery of possession to the buyer.”

16. Returning to the facts of the present case, it is clear that the possession of the apartment in question has still not been handed over by the Opposite Party to the Complainant. Moreover, it is noted that the Opposite Party duly sent the cancellation letter dated 13.07.2013 to the Complainant, informing about the cancellation of the allotment of the apartment in question at the Complainant's registered address, and the present complaint was filed on 15.03.2013.
17. Applying the above settled law, it is clear that the Complainant has filed the present complaint within two years from the date of the cancellation letter dated 13.07.2013. Therefore, the Complainant has a cause of action against the Opposite Party to approach this commission.
18. The next question for consideration before us is **whether the present complaint involves complicated questions of facts and law, which should be decided by the civil court?**
19. The Consumer Protection Act, 1986, came into being in order to protect the interests of *Consumers* who are affected by the acts of the service providers,

who in order to attract the Consumers, tend to make lucrative offers but when it comes to actually providing the offered services, they take a step back.

20. Deficiency has been defined under section 2 sub-clause (g) which reads as follows:

“(2)(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. Returning to the facts of the present complaint, the perusal of the record shows that the Complainant avail the services of the Opposite Party for a consideration. However, the Opposite Party failed to complete the said project, aggrieved by which, the Complainant has sought the refund of the amount paid by him. Hence, the Complainant is entitled to file the present complaint before this commission since the Complainant is aggrieved by the deficient services of the Opposite Party i.e., the failure of the Opposite Party to handover the possession of the said apartment within prescribed time and it is only due to this reason, that the reliefs are sought from the Opposite Party, which this Commission is authorised to adjudicate.
22. Our view is further fortified by the dicta of Hon'ble Supreme Court in ***Narne Construction P. Ltd., etc. v. Union of India and Ors. Etc.***, reported at ***AIR 2012 SC 2369***, wherein it was held that when a person applies for the allotment of a building or site or for a flat constructed by the Development Authority and enters into an agreement with the Developer, or the Contractor, the nature of transaction is covered by the expression 'service' of any description. Housing construction or building activity carried on by a private or statutory body constitutes 'service' within the ambit of Section 2(1)(o) of the Act and

any deficiency or defect in such service would make it accountable before the competent consumer forum at the instance of consumers.

23. Moreover, nothing cogent has been brought on record by the Opposite Party which would reflect that there are such complicated questions involved which could not be settled on the basis of the pleadings filed on behalf of the contesting parties. Consequently, we are of the view that the present complaint falls within the four corners of the jurisdiction of this commission and there is no bar with respect to the jurisdiction of this commission to entertain cases related to the refund of amount deposited with the Opposite Party.
24. The main question of consideration before us is **whether the Opposite Party is actually deficient in providing its services to the Complainant or not?**
25. The counsel for the Opposite Party further contented that the Complainant is guilty of *suggestion falsi* and *suppression veri* as the Complainant concealed various material facts from this commission with regard to the timely payment towards the said apartment. Therefore, there is no deficiency on the part of the Opposite Party. 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."

26. At this stage, we deem it appropriate to refer to 16 term and condition of the allotment letter dated 23.05.2008 entered into by both the contesting parties. It reflects that the Opposite Party was bound to handover the possession of the said apartment within 36 months from the date of allotment letter subject to force majeure circumstances. However, the Opposite Party failed to hand over the possession of the said apartment within prescribed time to the Complainant. Moreover, it is clear from the picture attached with the present complaint that the construction was not completed till the filing of the present complaint despite taking huge amount of Rs.16,76,700/- from the Complainant. Therefore, it is clear that the construction lagging much lagging the schedule and it is unreasonable to expect the complainant to make payment

when the construction is significantly delayed, especially given that they opted for a construction-linked payment plan for the said apartment.

27. In the view of the aforesaid discussions, 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 apartment and cancelling the allotment of the Complainant.
28. Further, the Complainant submitted that he had deposited a total amount of Rs. 17,52,757/- towards the said apartment. However, we failed to find any evidence that the Complainant had paid more than Rs. 16,76,700/- to the Opposite Party. Moreover, the Complainant admitted this amount in a letter dated 19.02.2013, wherein he was seeking an update on the status of the said apartment from the Opposite Party.
29. 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. 16,76,700/-** 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 **05.11.2024** (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 **05.01.2025**;
 - C. Being guided by the principles as discussed above, in case the Opposite Party fails to refund the amount as per the aforesaid clause **(A)** on or before **05.01.2025**, 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.

30. 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. 1,00,000/- as compensation for mental agony and
harassment caused to the complainant; and

B. The litigation cost to the extent of Rs. 50,000/-.

31. Applications pending, if any, stands 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: **05.11.2024**

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