

IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION

Date of Institution: 25.10.2019

Date of reserving the order: 19.11.2024

Date of Decision: 09.12.2024

COMPLAINT CASE NO.- 984/2019

IN THE MATTER OF

1. MR. JAI NARAYAN

S/O MR. BANSI LAL

C/O MR. SAMPAT LAL

2. MS. PREETI

W/O MR. RAM SINGH

C/O MR. SAMPAT LAL

BOTH RESIDENT OF:

B-073, AASHIANA BAGEECHA,

ALWAR BYPASS, BHIWADI,

DISTT. ALWAR, RAJASTHAN-301019

(Through: Ms. Sunita Chola, Advocate)

...Complainants

VERSUS

M/S PARSVNATH DEVELOPERS PVT. LTD.

AT: 6th FLOOR, ARUNACHAL BUILDING,

19, BARAKHAMBA ROAD, NEW DELHI

(Through: Mr. Rakesh Bhardwaj &

Ms. Tanvi Garg, Advocate)

...Opposite party

CORAM:

HON'BLE MS. BIMLA KUMARI, PRESIDING MEMBER

Present: Ms. Sunita Chola, counsel for the Complainant

Ms. Tanvi Garg, counsel for the OP

PER: HON'BLE MS. BIMLA KUMARI, PRESIDING MEMBER

JUDGMENT

1. Brief facts of the case are that the Complainant No. 1 and Complainant No. 2 (who is the daughter of Complainant No. 1) applied for allotment of office space in the upcoming project of Opposite Party namely '**Parsvnath City Center Bhiwadi**' Rajasthan. Thereafter, on 16.06.2007, 'Commercial Space Agreement' was executed between the parties for the commercial space bearing no. UGF-09 admeasuring 661 sq. ft. in the abovesaid project. The total basic sale price of the said commercial space was Rs.22,67,230/-. The Complainants had opted for 'Construction Linked Payment Plan' to make the payment of the said commercial space. As per clause 13(a) of the said agreement dated 16.06.2007, the Opposite Party had agreed to complete the construction of the complex within a period of 30 months from the date of commencement of construction, on receipt of sanction of building plans and all other approvals subject to force majeure including any restraints/restrictions from any authorities, non-availability of building materials or disputes with contractors/work force and circumstances beyond the control of the Developer and subject to timely payments by the Buyers.
2. It is the case of Complainants that from September 2006 to July 2008, they had paid a total sum of Rs.22,38,807/- to the Opposite Party as and when the same was demanded by the Opposite Party. However, the Opposite Party after starting the construction, abandoned the project. They visited the project site, on number of occasions and also wrote

various letters dated 12.03.2010, 23.07.2011, 09.09.2014 & 16.10.2014 to the Opposite Party, but the Opposite Party always avoided to give any plausible reply and kept on delaying the matter on one pretext or other.

3. It is the further case of Complainants that since there was no sign of completing the construction at the project site by the Opposite Party and there having already occurred a delay of more than nine years in handing over the possession, the Complainants sent a legal notice dated 01.08.2019 to the Opposite Party seeking refund of their entire amount along with interest, but the Opposite Party did not even respond to the same.
4. Thus, the Complainants were left with no other option but to file the present complaint alleging deficiency of service and unfair trade practice on the part of the Opposite Party.
5. After filing of the complaint by the Complainants, the notice of the complaint was issued to the Opposite Party on 25.11.2019.
6. Upon service, the Opposite Party filed the written statement, wherein it was stated that time given in the agreement for handing over possession was tentative and the delay in completing the project was due to global economic slowdown, experienced by the real estate sector in the country and in the event of any delay, the rights of the Complainants were duly protected as stipulated in clause no. 13(c) of the Commercial Space Agreement. The Opposite Party had also raised preliminary objections as to the maintainability of the complaint case. The Opposite Party contended that the Complainants are not

“Consumers” as he had booked the commercial space for earning profit. The Opposite Party further contended that the present complaint is barred by limitation. The Opposite Party further contended that the present complaint involves complicated questions of facts and law, which cannot be decided in summary procedure adopted by this Commission.

7. The Complainants filed rejoinder to the written statement of Opposite Party, rebutting the averments made in the written statement filed by the Opposite Party.

8. The Complainants have filed evidence by way of affidavit of Complainant No. 1 i.e. Mr. Jain Narayan, in order to prove their averments on record.

9. The Opposite Party had also filed evidence by way of affidavit of Mr. Rajan Wahal, Senior Manager (CRM) of Opposite Party.

10. The Complainants have filed their written arguments.

11. **However, despite having granted several opportunities to the Opposite Party to file the written arguments, the Opposite Party did not file written arguments. Hence, the right of the Opposite Party to file written arguments was closed vide order dated 22.11.2023.**

12. I have perused the material available on record and heard the counsel for both the parties.

13. First, of all, I would like to deal with the preliminary objections taken by the Opposite Party.

“Whether the Complainants are not ‘Consumers’.”

14. To resolve this issue, I deem it appropriate to refer to Section 2 (1) (d) of Consumer Protection Act, 1986:

“Section 2(1)(d) Consumer” means any person who-

- i. buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or*
- ii. hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [but does not include a person who avails of such services for any commercial purpose]*

*Explanation – For the purpose of this clause, **“commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;***

15. Further, I would like to refer the judgment 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 follows:

“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."

16. Further, in **Anju Vinod Saraswat (Mrs.) Vs. Sahara Prime City Limited IV (2022) CPJ 206 (NC)**, it was held as under:

"Onus of establishing that complainant was dealing in real estate, i.e., in purchase and sale of plots/flats for commercial purpose to earn profits lies upon opposite party."

17. In the present case, the Complainants have averred that they had booked the said commercial space for their office use to earn their livelihood, but got cheated in the hands of Opposite Party. But, on the other hand, the Opposite Party has merely made a bald statement that Complainants are not Consumer as the property in question is commercial in nature and was booked by the Complainants for earning profit. However, on perusal of the record; we fail to find any material which shows that the Complainants were involved in the business of selling and purchasing of flats/shops on regular basis. Mere allegation, that the property was booked by the Complainant for commercial purpose, cannot be the ground to reject the complaint. Hence, I am of the considered view that the Complainants are 'Consumers' as defined in the Section 2(1)(d) of the Consumer Protection Act, 1986.

18. Consequently, the objection raised on behalf of the Opposite Party is answered in negative.

"Whether the complaint is barred by limitation."

19. To adjudicate this issue, it is imperative to refer Section 24A of the Consumer Protection Act, 1986:

“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 had 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 within 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.”

20. Analysis of Section 24A of the Consumer Protection Act, 1986 shows 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.

21. I deem it appropriate to refer the judgment of **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:

“The Opposite Party contested the complaint as being barred by limitation prescribed under section 24(a) of the Consumer Protection Act, 1986 since the last date stipulated in the buyers' agreement for giving possession of the flat expired more than 2 years ago. 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. In the present case, the Opposite Party has not refused possession of the flat to the complainants at any point of time. Therefore, the cause of action continues to subsist in favour of the Complainant.”

22. Applying the above settled law and considering the facts of the case that the Opposite Party has not refused, at any point of time, to hand over the possession of the commercial space to the Complainants in this case but always kept assuring the Complainant that the construction would be completed soon. It is worth noting that the possession of the said commercial space is still pending; giving the Complainant a recurrent cause of action to file the present complaint.

23. Thus, I hold that the cause of action continues to subsist in favour of the Complainants and the present complaint is within the period of limitation and not barred by limitation.

“Whether the complaint involves complicated question of facts and law.”

24. To resolve this issue, it is imperative to refer to the dicta of the Hon’ble Supreme Court in **J.J. Merchant Versus Shrinath Chaturvedi (2002) 6 SCC 635** wherein it was inter alia held by the Hon’ble Supreme Court as under:

“Under the Act the National Commission is required to be headed by a retired Judge of this court and the State Commission is required to be headed by a retired High Court Judge. They are competent to decide complicated issues of law or facts. Hence, it would not be proper to hold that in cases where negligence of experts is alleged, consumers should be directed to approach the civil court. It

was further held that merely because it is mentioned that the Commission or Forum is required to have summary trial would hardly be a ground for directing consumer to approach the civil court. For the trial to be just and reasonable, long-drawn delayed procedure, giving ample opportunity to the litigant to harass the aggrieved other side, is not necessary. It should be kept in mind that the legislature has provided alternative, efficacious, simple, inexpensive and speedy remedy to the consumers and that should not be curtailed on such ground. It would also be a totally wrong assumption that because summary trial is provided, justice cannot be done when some questions of facts are required to be dealt with or decided. The Act provides sufficient safeguards.”

25. Returning to the facts of the present complaint and perusal of the record shows that the Complainants had availed the services of the Opposite Party for a consideration. Moreover, the Opposite Party had received the amount to the extent of Rs.22,38,807/- (i.e. almost 100% of the basic sale price of the said commercial space) from the Complainants and that too way back in the year 2008, on the false pretext that the possession of the commercial space would be handed over soon. What to talk of handing over possession of the said commercial space to the Complainants, even the construction at the site has not been completed till date by the Opposite Party. Aggrieved by the aforesaid, the Complainants had served a legal notice dated 01.08.2019 upon the Opposite Party seeking refund of his entire amount deposited to the Opposite Party, but the Opposite Party did not even respond to the said notice. Hence, the Complainants filed the complaint before this Commission as they were aggrieved by the deficient services of the Opposite Party i.e., the failure of the Opposite Party to handover the possession of the said commercial space within the stipulated period of time.

26. 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, I am of the view that the present complaint falls within the four corners of the jurisdiction of this Commission.

27. The ***last question*** for adjudication is ***“whether the Opposite Party is deficient in providing its services to the Complainant or not.”***

28. 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.

29. The fact that the Complainants had booked the commercial space with the Opposite Party is evident from 'Commercial Space Agreement' dated 16.06.2007 (*Annexure-2 Page 16 to 28 of complaint*) executed between the parties. And the payment to the extent of Rs.22,38,807/- received by the Opposite Party, is evident from the photocopies of the receipts issued by the Opposite Party (*Annexure-4 Page 30 to 38 of complaint*).

30. At this stage, I deem it appropriate to refer to Clause No. 13 (a) of the 'Commercial Space Agreement' dated 16.06.2007 entered between the contesting parties. It reflects that the Opposite Party was bound to hand over the possession of the said commercial space within 30 months from the date of commencement of construction. Further, it is noteworthy that it was for the Opposite Party to obtain sanction of building plan and other approvals. Further, the Opposite Party did not place on record any material to prove that construction of

the project could not be completed on account of force majeure and non-availability of building materials or workforce or other circumstances, which were beyond the control of Opposite Party. On the other hand, Complainants have placed on record the show cause notice dated 19.11.2013 (Annexure-3 Page 29 of complaint) issued by RIICO i.e. Rajasthan Industrial and Investment Corporation Ltd., for cancellation of allotment of lease hold plot no. 812/CP-1 near UIT Police Chowki, SBI Road, Bhiwadi, which was allotted to the Opposite Party on lease for a period of 99 years for construction of commercial centre. It is worth noting that construction of the complex was to be completed by Opposite Party till 03.07.2012, as per this notice, issued by RIICO to Opposite Party, but the Opposite Party failed to raise the construction and violated the terms of the Lease Agreement executed between RIICO and Opposite Party.

31. It is also noteworthy that the basic price of the said commercial space was of Rs.22,67,230/- and the Complainants till date have already paid an amount of Rs.22,38,807/- to the Opposite Party and that too way back in the year 2008. However, till date the Opposite Party did not hand over the commercial space as the same was not constructed by it.

32. It is a settled law that the Complainants cannot be expected to wait for an indefinite time period to get the benefits of their hard earned money, which they had spent in order to purchase the property in question. **(Ref: Fortune Infrastructure v. Trevor D'Lima reported at (2018) 5 SCC 442)**

33. Consequently, I hold that the Opposite Party is deficient in providing its services to the Complainants

since it has failed to hand over possession of the commercial space till date to them.

34. Thus, the Complainants are entitled for the refund of the money deposited by them with the Opposite Party.

35. Keeping in view the facts of the present case and the extensive law as discussed above, I direct the Opposite Party to refund the entire amount paid by the Complainants i.e., **Rs. 22,38,807/-** 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 **09.12.2024** (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 **09.02.2025**;
- 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 **09.02.2025**, 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.

36. 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 cost for mental agony and harassment to the Complainant; and

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

37. Accordingly, the complaint filed by the Complainant is hereby allowed.
38. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
39. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
40. File be consigned to record room along with a copy of this Judgment.

(BIMLA KUMARI)
MEMBER (FEMALE)

Pronounced On: 09.12.2024