

IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION

Date of Institution: 28.04.2016

Date of Hearing: 11.11.2025

Date of Decision: 24.11.2025

COMPLAINT CASE NO.- 441/2016

IN THE MATTER OF

- 1. MR. MANOJ KHANNA,**
S/O MR. SAROJ KHANNA,
- 2. MR. VIJAY KUMAR KHANNA,**
S/O MR. SAROJ KHANNA,

BOTH R/O- H. NO. 49, VIVEK NAGAR,
RAJPUR ROAD, LUDHIANA, PUNJAB.

(Through: Mr. Gurmeet Kaur Kapur &
Mr. P.S. Goindi, Advocates)

...Complainants

VERSUS

M/S PARSVNATH DEVELOPERS LTD.,
6TH FLOOR, ARUNACHAL BUILDING,
19, BARAKHAMBA ROAD, NEW DELHI 110001.

(Through: Ms. Tanvi Garg, Advocate)

...Opposite Party

CORAM

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)

HON'BLE MS. BIMLA KUMARI, MEMBER (FEMALE)

Present: None for the Complainants.
Mr. T.P. Chauhan & Ms. Gagandeep Kaur Gujral, Counsel for
the Opposite Party.

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

JUDGMENT

1. The present Consumer Complaint has been filed under Section 17 of the Consumer Protection Act, 1986, by the Complainants before this Commission alleging deficiency in service and unfair trade practices by the Opposite Party and has prayed the following reliefs:
 - (a) *"To pay back the amount of Rs. 20,00,000/- alongwith interest @ 24% P.A. to the complainants;*
 - (b) *Or in alternative to hand over the possession of the flat in the said project;*
 - (c) *To pay a compensation to the tune of Rs. 5,00,000/- With 24 % PA interest along with legal fee and other charges;*
 - (d) *Any other of further relief, which this Hon'ble Forum may deem fit and proper in the facts and circumstances, may also be passed in favour of complainant in the interest of justice."*
2. Brief facts necessary for the adjudication of the present complaint are that the Complainants were lured by the advertisement issued by the Opposite Party about its Future Group Housing Complex Project to be launched in Sarai Rohilla, Kishanganj, New Delhi and showed their interest towards booking of a Residential Apartment for their personal use. In the year 2011, the Complainants tendered four cheques amounting Rs. 5,00,000/- each as advance amount for the Residential Apartment in the said project. Further, the Complainants were assured by the Opposite Party to get the possession of the Residential Apartment within three years i.e. by the year 2014.

3. Thereafter, the Complainants had sent repeated reminders and visited the office of Opposite Party on several occasions requesting for the copies of sanctions granted by the Govt. and to handover the possession of the Apartment but till date neither the details of the project was supplied to the Complainants nor any offer of possession was made by the Opposite Party. The Complainants over the time had paid a sum of Rs. 20,00,000/- as advance payment to the Opposite Party for the said Apartment. However, the Opposite Party kept extending the dates as per its own convenience and never gave any satisfactory response despite regular visits and correspondences. The Complainants also sent a legal notice dated 02.03.2016 to the Opposite Party asking for the refund of the amount already paid by the Complainants but was of no avail. Aggrieved by the facts as stated above, the Complainants approached this Commission.
4. The Opposite Party have contested the present case and have raised preliminary objections as to the maintainability of the complaint case. The counsel of the Opposite Party submitted that the Complainants are not 'consumers' under the Consumer Protection Act, 1986 as they invested the money to earn profit, which amounts to commercial purpose. The counsel for the Opposite Party further submitted that the Complainants have no cause of action to file the present complaint. The counsel for the Opposite Party also contended that the present complaint involves complicated question of facts and law, which require detail examination and cross examination of witnesses and the same cannot be adjudicated in a summary procedure before this Commission. Pressing the aforesaid objections, the counsel appearing on behalf of the Opposite Party prayed that the complaint should 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 written arguments have also been filed by the parties and the same have been duly considered by this Commission at the time of arguments addressed by the parties.
7. We have perused the material available on record and heard the counsel appearing on behalf of the parties.
8. The fact that the Complainants have paid an amount of Rs. 20,00,000/- as advance payment for the Residential Apartment is evident from the receipts issued by the Opposite Party.
9. The ***first question*** for consideration before us is ***whether the Complainants fall within the category of ‘Consumer’ as defined under The Consumer Protection Act, 1986?***
10. The Opposite Party contended that the Complainants are not ‘Consumer’ as defined under the Consumer Protection Act, 1986 as they invested the money to earn profit, which amounts to commercial purpose.
11. 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.”

12. 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.”*

13. From the aforesaid dicta of the Hon'ble National Commission, it flows that it is for the Opposite Party to prove that the 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 Complainants.
14. In the present case, the Opposite Party has merely made a statement that the Complainants booked the Apartment for commercial purpose and on perusal of the record before us, we fail to find any material which shows that the Complainants are 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.
15. The next question for consideration before us is ***whether the Complainants have any cause of action to approach this Commission?***
16. To answer this question, 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.”

17. 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. It is clear in the present case that the Opposite Party till date has failed to allot the Apartment as well as failed to handover the possession of the Apartment in question to the Complainants.
18. 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.”

19. Applying the above settled law, it is clear that the Complainants are within their right to file the present complaint as the Opposite Party failed to allot the Apartment and the possession & completion of construction are still pending and has not seen the light of the day; giving the Complainants a recurrent cause of action to file the present complaint.

20. The *next question* for consideration is *whether the present complaint involves complicated question of facts and law, which should be decided by the civil court?*
21. The Opposite Party contended that the jurisdiction of this Commission would be barred since the present complaint is in fact a suit for recovery on which court fees is payable and would lie in a Civil Court and the Complainants in order to save the payment of court fees has filed the complaint under the Consumer Protection Act, 1986. Moreover, the complicated question of facts and law which have been raised in the present complaint can only be decided before the Civil Court.
22. It is pertinent to note here that 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.
23. 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;”*
24. Returning to the facts of the present complaint, the perusal of the record shows that the Complainants avail the services of the Opposite Party for a consideration. However, the Opposite Party failed to allot the Apartment as well as failed to handover the possession of the Apartment in question, aggrieved by which, the Complainants have sought refund of the amount paid by them. Hence, the Complainants are entitled to file the present complaint before this Commission since the Complainants are 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 and it is only due to this reason, that the refund of the amount paid is sought from the Opposite Party, which this Commission is authorised to adjudicate.

25. Having discussed the preliminary objections raised on behalf of the Opposite Parties, the *last question* for consideration before us is *whether the Opposite Party is deficient in providing its services to the Complainants*.
26. During the course of proceeding, vide order dated 11.11.2025, the Counsel for the Opposite Party submitted that the he is ready to make the entire payment of the Complainants along with interest @ 6% p.a., the Counsel further submits that if they failed to pay the entire amount within two months, the Opposite Party is ready to refund the entire amount along with interest @ 9% p.a. to the Complainants.
27. Since, the Opposite Party has already admitted its deficiency of service by failing to allot the Apartment as well as failed to handover the possession of the Apartment to the Complainants. In our view, the Opposite Party is clearly deficient in providing its services to the Complainants and kept the hard earned money of the Complainants till date.
28. 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 Complainants i.e., **Rs. 20,00,000/-** 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 **24.11.2025** (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 **24.01.2026**;

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 **24.01.2026**, 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.

29. 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 Complainants; and

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

30. Applications pending, if any, stands disposed of in terms of the aforesaid judgment.

31. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.

32. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(BIMLA KUMARI)
MEMBER (FEMALE)

Pronounced On:

24.11.2025

LR-AJ