

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL
COMMISSION**

Date of Institution: 09.07.2021

Date of Hearing: 30.09.2024

Date of Decision: 19.12.2024

COMPLAINT CASE NO- 105/2021

IN THE MATTER OF

**MS. NIRMAL SATWANT SINGH
W/O LATE MR. SATWANT SINGH
R/O D-VILLA, CENTRAL PARK
GOLF COURSE ROAD,
GURGOAN, HARYANA.**

(Through: PSP Legal, Advocates and Solicitors)

...Complainant

VERSUS

**VSR INFRATECH PRIVATE LIMITED,
THROUGH IT DIRECTORS**

HAVING ITS REGISTERED OFFICE AT:

**A-22, HILL VIEW APARTMENTS
VASANT VIHAR, NEW DELHI-110057.**

(Through: Mr. Sandeep Phogat, Advocate)

...Opposite Party

CORAM:

**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL
(PRESIDENT)**

HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: Ms. Anita Priyadarshi, Counsel for the complainant.
Mr. Sandeep Phogat, Counsel for OP

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

JUDGMENT

1. The present complaint has been filed by the Complainant alleging deficiency in service and unfair trade practices by the Opposite Party and has prayed the following reliefs:

- a) *Direct the Opposite Party for an immediate 100% refund of the total amount paid by the Complainant along with a penal interest of 18% per annum from the date of receipt of payments made to the Opposite Party;*
- b) *Direct the Opposite Party to pay compensation of Rs. 50,00,000/- (Rupees Fifty Lakh Only) to the Complainant for mental agony, harassment, discomfort and undue hardships caused to the complainant as a result of the above acts and omissions on the part of the Opposite Party;*
- c) *Direct the Opposite Party to pay a sum of Rs. 3,00,000/- (Rupees Five Lakh Only) to the Complainant towards litigation costs;*

d) That any other and further relief in favour of the Complainant as the Hon'ble Commission may deem fit and proper in the fact and circumstances of the case."

2. Brief facts necessary for the adjudication of the present complaint are that in year 2013, the Complainant booked three units with the Opposite Party in a project named "114 Avenue," situated at Sector-114, Village Bajghera, Gurugram, Haryana. The Complainant booked two units for residential purposes and one unit for earning livelihood through self-employment by renting it out. Being an elderly lady, the Complainant sought to secure a residence for her old age and a source of livelihood. The Complainant paid a total sum of Rs.2,43,92,121/- towards these three units, amounting to Rs.81,30,707/- for each unit. Consequently, the Opposite Party executed three Memorandums of Understanding, all dated 24.07.2013. Subsequently, the Opposite Party allotted three units, namely 5A-01, 5A-29, and 6A-30, each for a total consideration of Rs. 78,40,000/-. The agreements, however, contained several one-sided and arbitrary clauses. As per Clause 1.4, in case of any delay in payment of the balance amount by the Complainant, the Opposite Party was entitled to charge interest at an exorbitant rate of 18% per annum for the first 30 days, and thereafter at a rate of 24% per annum, or even terminate the agreement. On the other hand, the agreements did not provide for any compensation to the Complainant in case of a delay in possession. The Opposite Party collected the entire sale consideration for the units from the Complainant prior to the execution of the agreements, leaving her with no choice but to sign the agreements as presented. Moreover, the agreements did not specify a definitive date for possession, to which the Complainant raised an objection. In response, the Opposite Party assured the

Complainant that possession of the units would be handed over within three years from the date of the agreements. However, the Opposite Party has neither handed over possession of the units to the Complainant nor completed their construction till date. More so, the Complainant inquired about the status of the construction, the Opposite Party responded with false assurances and promises. Consequently, the Complainant vide letters dated 27.06.2015 and 28.03.2016, sought a refund of the amount paid towards the said units, as per Clause 4 of the agreement. Instead of addressing the Complainant's grievances, the Opposite Party repeatedly extended the possession date under the pretext of supplemental Memorandums of Understanding dated 23.07.2015, 24.07.2016, and 24.07.2017. The Complainant also made several communications regarding the possession of the said units but the Opposite Party failed to provide any satisfactory response. Thus, the Complainant has approached this Commission, alleging a deficiency in services on the part of the Opposite Party.

3. The Opposite Party has contested the present case and raised preliminary objections regarding the maintainability of the complaint. The counsel for the Opposite Party submitted that the Complainant is not a consumer under the Consumer Protection Act, 2019, as the investment made by the Complainant was intended to earn profit, which constitutes a commercial purpose. Furthermore, the counsel contended that the present complaint is barred by limitation under Section 24A of the Consumer Protection Act, 2019, as the agreement between the parties was executed on 24.07.2013, i.e., more than eight years prior to the filing of the present complaint. It was further submitted that no cause of action exists in favor of the Complainant to file the present complaint.

4. The counsel for the Opposite Party further submitted that this Commission lacks territorial jurisdiction to adjudicate and entertain the present complaint, as both the branch office and the corporate office of the Opposite Party are situated in Gurugram, and the project in question is also located in Gurugram. He also submitted that the structure of the building, where the unit booked by the Complainant is situated, has been completed and is ready; however, the Opposite Party could not apply for the Occupation Certificates due to the incomplete construction of the Dwarka Expressway, as the Bajghera road has been blocked for approximately three years due to ongoing construction. Additionally, the counsel submitted that the construction of the project was halted several times during 2016, 2017, 2018, and 2019 by orders issued by the EPCA, HSPCB, NGT, and the Hon'ble Supreme Court. Moreover, due to rising pollution levels in the NCR region, the Hon'ble Supreme Court, vide its order dated 10.11.2019, imposed a complete ban on construction and excavation work across the National Capital Region. Pressing the aforesaid objections, the counsel appearing on behalf of the Opposite Party prayed that the complaint be dismissed.
5. The Complainant has 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 its written argument, relying on the following judgment:
 - i. *Laxmi Engineering Works v. P.S.G. Industrial Institute* (1995) 3 SCC 583.

- ii. *Anila Jain v. Emaar MGF Land Ltd. Consumer Case No. 2208 of 2017 (decided on 11 Nov 2019).*
 - iii. *Kolkata West International City Pvt Ltd. Vs. Devasis Rudra in Civil Appeal No. 3182 of 2019 (SLP (C)No (s). 1795 of 2017) (decided on 25.03.2019).*
 - iv. *Wg. Cdr. Arifur Rahman Khan and Ors. vs Dlf Southern Homes Pvt. Ltd. Civil Appeal No. 6239 of 2019 [decided on 24 August 2020].*
 - v. *Sanjay Rastogi v. BPTP, CC No. 3580 of 2017, [decided on 18.06.2020].*
 - vi. *Emaar MGF Land Ltd. & Ors. Vs. Amit Puri {(Il 2015 CPJ 568 (NC))}.*
 - vii. *Fortune Infrastructure & Anr. v. Trevor D'Lima & Ors. ((2018) 5 SCC 4421.*
7. Written Arguments of the Opposite Party and relying on the following judgment:
- a. *Rishi Malhotra Vs. Blue Coast Infrastructure Development Pvt. Ltd. and Ors., I (2017) CPJ 541 (NC);*
 - b. *Kusum Goenka and 3 Others vs M/s. Wianxx Impex Private Limited.*
 - c. *Devesh Wadhwa v. M/s. Emaar MGF Land Ltd., (NCDRC) (New Delhi)*
 - d. *Balbir Singh Randhawa vs DLF Universal Ltd. & Anr. 2016(2) CLT 283*

- e. *Smt. Shikha Birla vs DLE Retailers Developers Ltd. 2013(1) CPJ 665*
 - f. *Ashok Thapar v. Supreme Indosaigon Associates 2016(2) CPJ 160*
 - g. *State of Orissa & Others v. Titaghur Paper Mills Company Ltd. & Another*
 - h. *AIR 1985 SC 1293, 1985 SCR (3) 26 United Indian Assurance Co. vs Harcharan Chand Chandan Lal Rai IV(2004) CPJ 15(SC)*
 - i. *National Insurance Co. vs Laxmi Narain Dhutt III (2007) CPJ 13*
8. We have perused the material available on record and heard the counsel for the parties.
9. *The first question for consideration before us is whether Complainant fall in the category of 'consumer' under the consumer protection act, 2019?*
10. To comment on this issue, we deem it appropriate to refer to Section 2(7) of the Consumer Protection Act, 2019, which provides as under:
- (7) "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 service 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 service 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 service for any commercial purpose.

11. The above statutory provision makes it clear that a person who buys goods or avail for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment is a consumer.
12. On perusal of record, it is evident from the MoU dated 24.07.2013 **(Annexure C-4 (colly))** that the Complainant had booked three units with the Opposite Party. The Opposite Party had also taken consideration of Rs.2,43,92,121/- from the Complainant towards the aforesaid bookings. Therefore, the Complainant falls under the category of 'consumer' provided by the Consumer Protection Act, 2019.
13. Further, the Opposite Party submitted that the Complainant purchased the commercial units for investment for purpose. However, it is clear from the record that the Complainant purchased the said units for the purpose of earning a livelihood by means of self-employment.

14. Moreover, the Hon'ble NCDRC, in a series of judgments, has held that the commercial use of a property depends on the facts and circumstances of each case, and that if the commercial use is for the purpose of earning a livelihood by means of self-employment, such a purchaser of goods would continue to be a consumer. A similar view was taken by the Hon'ble Supreme Court in **Civil Appeal No. 5858/2017, titled as Rohit Choudhary & Anr. vs. M/s Vipul Ltd., decided on 06.09.2023, and Civil Appeal No. 12322 of 2016, titled as Lilavati Kirtilal Mehta Medical Trust vs. Unique Shantu Developers & Co., decided on 14.11.2019.**
10. Furthermore, on perusal of the record before us, we fail to find any material that shows the Complainant is engaged in the business of purchasing and selling houses and/or plots on a regular basis, solely with a view to making a profit by the sale of such units. A mere allegation that the purchase of the property is for commercial purposes cannot be ground to reject the present consumer complaint.
11. The **second issue** to be adjudicated is ***whether the present complaint barred by law of limitation under Consumer Protection Act' 2019.*** It is imperative to refer to Section 69 of the Consumer Protection Act, 2019 wherein it is provided as under: -

*“(1) The District Commission, 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 Commission, 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 District Commission or the State Commission or the National Commission, as the case may be, records its reasons for condoning such delay.”

12. Analysis of Section 69 of the Consumer Protection Act, 2019 leads us to the conclusion 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. In the present case neither possession of the said units in question has been delivered to the Complainant nor the opposite party in possession to hand over the possession of the said units to the Complainant. 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.”

13. Applying the above settled law, it is clear that failure to deliver possession being a continuous wrong it constitutes a recurrent cause of action and, therefore, so long as the possession is not delivered to the Complainant. The Complainant is within their right to file the present complaint before this commission.

14. The next question for consideration is whether this commission has territorial jurisdiction to decide the present complaint?
15. The counsel for the Opposite Party has raised an issue relating to the jurisdiction of this commission to try the present complaint.
16. To deal with this issue, we deem it necessary to refer section 47 of the Consumer Protection Act, 2019.

Section – 47 Jurisdiction of State Commission— (1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction—

(4) 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, ordinarily 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 in such case, the permission of the State Commission is given; or

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

(d) the complainant resides or personally works for gain.

17. Analysis of Section 47 (4) of the Consumer Protection Act, 2019 leads us to the conclusion that this commission shall have the territorial jurisdiction where Opposite Party 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 the cause of action arose.
18. Having discussed the statutory position, the facts of the present case reflect that the registered office of the Opposite Party is at A-22, Hill View Apartment, Vasant Vihar, New Delhi – 110057, Since the registered office

falls within the territory of Delhi, this commission has the territorial jurisdiction to adjudicate the case.

19. To strength the aforesaid findings, we tend to rely on **Rohit Srivastava v. Paramount Villas Pvt. Ltd.** reported at **2017 SCC OnLine NCDRC 1198**, wherein it has been held as under:

“It is not in dispute that the Registered Office of Opposite Party No. 1 Company is situated in Delhi, i.e., within the territorial jurisdiction of the State Commission at Delhi and therefore, in the light of clear provision contained in Section 17(2)(a), which stipulates that a Complaint can be instituted in a State Commission, within the limits of whose jurisdiction, the Opposite Party actually carries on business. In view of the said provision, we have no hesitation in coming to the conclusion that since the Registered Office of the first Opposite Party is situated in Delhi, the State Commission did have the territorial jurisdiction to entertain the Complaint.”

20. Relying on the above settled law, we are of the view that this commission has the territorial jurisdiction to decide the present complaint.
21. The main question for consideration before us is whether the Opposite Party is 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."

22. Returning to the facts of the present case, it is noted that though the Complainant submitted that the Opposite Party assured her to hand over

the possession of the said unit within a maximum period of 3 years from the date of execution of MoU dated 24.07.2013, however, we failed to find any document/provision which shows us the time period within which Opposite Party had to handover the possession of the said units to the Complainant.

23. To resolve the aforesaid issue, it is appropriate to refer to the ***First Appeal no. 348/2016*** tiled as ***“Ajay Enterprises Pvt. Ltd. and Ors. vs. Shobha Arora and Ors.”*** decided on ***10.05.2019***, wherein the Hon’ble NCDRC has 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.”

24. Relying on the above settled law, if the possession is delivered beyond the 42 months or beyond 48 months, the deficiency in service on the part of the Opposite Party shall stand proved. It is clear that the Opposite Party failed to handover the possession of the said units in question even after the passing of more than 11 years from the date of first MoU 24.07.2013. Therefore, the deficiency on the part of Opposite Party stands proved.
25. The Opposite Party submitted that it could not apply for the Occupation Certificates due to ongoing construction on the Dwarka Expressway, which had blocked the main connecting Bajghera road for around three years. Additionally, construction of the project faced multiple halts during 2016–2019 due to orders from EPCA, HSPCB, NGT, and the Hon’ble Supreme Court. A complete ban on construction and excavation work across NCR was imposed by the Hon’ble Supreme Court on 10.11.2019 due to rising pollution levels.
26. We hold that all the aforementioned reasons do not fall within the ambit of reasons beyond their control as it can be seen from the record that the MoU for each unit were executed between the parties on 24.07.2013 and the Opposite Party relying upon order passed in from year 2016 to 2019. More so, the ban on construction and excavation work across NCR was imposed by the Hon’ble Supreme Court on 10.11.2019, which is also after

six years after the execution of the MoU. Therefore, the same cannot be construed to be any substantial reason for delaying inordinate in handing over the possession of the said units.

27. More so, it is accepted by the Opposite Party in the written statement that the he failed to receive Occupation certificate till date. Moreover, no specific date given for the handing over of possession of the subject units. Hence, the decision of the Hon'ble Supreme Court in Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra,; II (2019) CPJ 29 (SC), wherein the Hon'ble Apex Court has laid down that the units purchaser cannot be made to wait indefinitely for delivery of possession, squarely applies to the facts of this case.
28. In view of the aforesaid discussion, we are of the considered opinion that in the present case also, the Complainant cannot be made to wait indefinitely for possession of the said units, as the construction is still incomplete and the Developer is not in a position to give an exact date of offering of possession to the Complainant. Therefore, the Complainant is entitled for refund of the principal amount with reasonable rate of interest and costs.
29. Relying on the above settled law, 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 completing the construction of the said units and kept the hard-earned money of the Complainant for many years.
30. 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. 2,43,92,121/-** 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 **19.12.2024** (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 no.1 pays the entire amount on or before **19.02.2025**;
- 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 **19.02.2025**, 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.

31. 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. 5,00,000/- as cost for mental agony and harassment to the Complainant; and
- B.** The litigation cost to the extent of Rs. 50,000/-.

32. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

33. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
34. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)

PRESIDENT

(PINKI)

MEMBER (JUDICIAL)

Pronounced On: **19.12.2024**

L.R.- ZA