

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

Case No.CC/248/2019

IN THE MATTER OF:

**Mrs. Sitara Shahin W/o. Sh. Saleem Ahmed,
R/o, T-25/4, Block-T, Khirkee Extension,
Malviya Nagar,
New Delhi-110017**

...Complainant

VERSUS

**M/S Ansal Landmark Townships Private Limited,
Through its Managing Director,
Having its office at:
210, Ansal Bhawan,
16, K.G. Marg,
New Delhi-110001**

...Opposite Party

Quorum:

**Ms. Poonam Chaudhry, President
Sh. Shekhar Chandra, Member**

**Date of Institution:27.09.2019
Order Reserved on:13.05.2024
Date of Order :24.05.2024**

ORDER

Poonam Chaudhry, President

1. The present complaint has been filed under section 12 of Consumer Protection Act (in short CP Act) against Opposite Party (in short OP) alleging deficiency of service.
2. Briefly stated the facts of the case are that the complainant booked one residential Unit in the Project of the opposite party known as "Aastha

Apartment”, Sushant City, Meerut for a total sum of Rs.6,90,379/- (Rupees Six Lakh Ninety Thousand Three Hundred Seventy Nine). An agreement dated 23.08.2009 was executed between both the parties.

3. The complainant deposited a total sum of Rs.6,90,379.00 with the OP as per the demand of the OP. It is further alleged that as per the Clause No.5 of the Agreement, OP was under legal obligation to complete the construction within two years from the date of commencement of the construction on receipt of sanctioned plan from the competent authority. However, the opposite party never apprised the complainant when the plan was sanctioned and when the construction was started.
4. It is further alleged that the complainant got issued a legal notice dated 03.10.2018 issued to OP through his Advocate calling upon the opposite party to apprise the latest stage of the construction as well as the date for handing over the actual physical possession of the Unit. The said notice was returned undelivered with the remarks “No such Company”. Thereafter, the complainant sent another notice dated 21.11.2018 on the latest address of OP which was served, but no reply was sent by the opposite party. The complainant is entitled for the refund of the amount deposited interest @18% p.a. w.e.f. each date of deposit and/or in alternative to possession of the Unit booked.

5. It is also alleged that the registered office of the opposite party is situated at K.G. Marg, New Delhi-110001, hence this Forum has territorial jurisdiction to entertain and adjudicate upon the present complaint. It is also alleged that there is no delay in filing the present complaint after return of the joint complaint filed by complainant before the Hon'ble Delhi State Commission vide order dated 07.08.2019.
6. It is prayed that OP be directed to refund Rs.15,60,900.57/- (Rupees Fifteen Lakh Sixty Thousand Nine Hundred and Fifty Seven Paisa) to the complainant with pendente lite interest @18% p.a. and costs of the litigation and/or in alternative the opposite party may be directed to hand over the unit mentioned in the agreement dated 23.08.2009.
7. Notice of the complaint was issued to OP, upon which OP entered appearance and filed written statement contesting the case on various grounds inter alia that complaint is wholly misconceived. It is also alleged that this complaint is not maintainable as complainant as it is not a consumer. It is further alleged that as per the Clause 32 of the agreement, all or any disputes arising out of or touching upon or in relation to terms of Arrangement, were to be settled amicably by mutual discussion, failing which dispute may be settled by Arbitration.
8. It is further alleged that this Commission does not have territorial jurisdiction as subject-matter of property is not located within the

territorial jurisdiction of this Commission. It is further alleged that complaint is premature as in case of a force majeure, the date of possession was to get extended and shall not be deemed to be deficiency on part of OP, as per the terms of the agreement. It was prayed that complaint be dismissed.

9. Complainant thereafter filed rejoinder reiterating therein the averments made in the complaint and denying all the allegation made in the written statement. Both parties thereafter filed their evidence by way of affidavits.
10. We have heard the Learned Counsels for parties and perused the evidence and material on record as well as their written arguments.
11. The fact that complainant booked a unit in the project of OP is an admitted fact as evident from the evidence led by parties. The complainant had relied upon the agreement/ letter of allotment dated 23.08.2009, receipts of payments, statement of account issued by OP, legal notices, copy of order of Hon'ble State Commission dated 07.08.2019.
12. It was contended on the behalf of the complainant that OP was deficient in providing services as complainant had paid 95% of the cost of the flat in question, however OP failed to deliver the unit/property within the stipulated period. It was also argued that according to the Clause 5 of the

agreement, the construction was to be completed within 2 years from the date of commencement of the construction on receipt of sanctioned plan, but OP failed to hand over possession of the unit even till filing of the complaint. It was further submitted that the prolonged delay in construction and handing over possession amounts to deficiency in service.

13. It is to be noted that as regard deficiency in services, Hon;ble Supreme Court has held in Arifur Rahman Khan and Ors. V. DLF Southern Homes Pvt. Ltd. And Ors. 2020(3) RCR Civil 544 that the failure of the developer to comply with the contractual obligation to provide the flat to a flat purchaser within the contractually stipulated time frame, amounts to deficiency.
14. It was also held in Lucknow Development Authority Vs. M.K. Gupta, 2 1994(1) SCC 243 by Hon'ble Supreme Court that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for a consideration, it is a "service" as defined by Section 2 (o) of the Consumer Protection Act, 1986. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service. Person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with compensation.

15. On the other hand it was submitted on behalf of the OP that the complainant is not a consumer. The disputes are liable to be referred to Arbitration in view of the agreement entered into between the parties. It was also argued that the complainant has not been able to establish any deficiency of service or consumer dispute as contemplated under the Act which could be attributable to the respondent, therefore, the Complaint is liable to be dismissed.
16. After giving our careful thought to the arguments advanced by Ld. Counsels for parties, we are of the view that admittedly, there is inordinate delay in handing over the possession of the unit in question which amounts to deficiency in service as the agreement was entered into on 23.08.2009. The construction was not completed even till date and there is no certainty as to when OP would be in a position to offer possession of allotted unit after obtaining the completion certificate.
17. It is to be noted Section 2 (47) of the Consumer Protection Act, 2019, defines 'unfair trade practices' in the following words: "unfair trade practice" means 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 unfair or deceptive practice ..." and includes any of the practices enumerated therein. The Hon'ble Supreme Court held in above case of Lucknow Development Authority Vs. M.k. Gupta,

1994(1) SCC 243, that when possession is not handed over within the stipulated period, the delay so caused is not only deficiency of service but also unfair trade practice.

18. It is also pertinent to note Hon'ble Supreme Court also held in Fortune Infrastructure and Anr. Vs. Trevor D'Lima and Ors.2018(5) SCC 442 that a person cannot be made to wait indefinitely for possession and they are entitled to seek refund of the amount paid by them along with compensation. Thus as the services of OP were deficient, the complainant was justified in claiming refund of the amount deposited by her with compensation.
19. We are further of the view that the cause of action being the continuing one as the amount advanced by complainant was not refunded neither possession of unit was handed over to her, the complaint is within the period of limitation.
20. It was also contended on behalf of the OP that the complaint was not maintainable as dispute between parties were to be referred to arbitration. In this regard it is to be noted that it was held by Hon'ble Supreme Court in M/s Emaar MGF Land Limited Vs. Aftaab Singh (Review Petition (c) No. 2629-2630 of 2018 in Civil Appeal No. 23512-23513 of 2017) if a consumer dispute arises from an agreement which has an arbitration

clause, the consumer forum will have jurisdiction to hear the dispute.

The said contention of OP is thus rejected.

21. The next contention of the OP was that the delay was due to force majeure. But it is to be noted that no evidence was led by OP in support of the said contention, that the delay was beyond the control of OP. The said contention thus stands rejected.
22. As regards the objection taken by OP that complainant is not a consumer, we are of the view that no evidence was brought on record by OP to show that Complainant booked the unit for investment, In this regard it has been held by Hon'ble Supreme Court in Sai Everest Developers vs. Harbans Singh Kohli, 2015 SCC online NCDRC 1895, that:- "the OP should establish by way of documentary evidence that the complainant was dealing in real estate or in the purchase and sale of the subject property for the purpose of making profit." Thus as no evidence was brought on record by OP to prove the said contention we are of the view that the same is without any merit.
23. We accordingly hold OP/M/s Ansal Landmark Townships Private Limited guilty of deficiency of service and direct OP/M/s Ansal Landmark Townships Private Limited to refund the amount of Rs.6,90,379/- (Rupees Six Lakh Ninety Thousand Three Hundred Seventy Nine) to the complainant with interest @ 9% p.a. from the date

of each deposit, within 4 weeks from the date of receipt of order, failing which OP will be liable to pay interest @ 12% p.a. till realization. We further award compensation of Rs.1,00,000/- (Rupees One Lakh) for mental agony and harassment and Rs.25,000/- (Rupees Twenty Five thousand) as cost of the litigation.

A copy of this order be provided/sent to all the parties free of cost.

The order be uploaded on the website of this Commission.

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

Poonam Chaudhry
(President)

Shekhar Chandra
(Member)