

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

Date of Institution: 29.05.2023

Date of hearing: 14.05.2024

Date of Decision: 07.06.2024

COMPLAINT CASE NO.- 83/2023

IN THE MATTER OF

MR. SHARANG JINDAL,

S/O MR. AKHIL KUMAR JINDAL,

R/O: SHF-12, ABOVE GDA MARKET,

VIVEKANAND NAGER, GHAZIABAD, KAVI NAGAR,

UTTAR PRADESH- 201002.

(Through: Curious Counsel, Advocates & Solicitors)

...Complainant

VERSUS.

**1. M/S ASSOTECH MOONSHINE URBAN DEVELOPERS PVT.
LTD.,**

OFFICE AT:

105, PANKAJ TOWER, 1ST FLOOR,

OPP. SUPREME ENCLAVE SOCIETY, MAYUR VIHAR,

PHASE-1, EAST DELHI, NEW DELHI-110091.

**2. MR. SANJEEV SRIVASTAVA & MR. MANGESH VAMSI
GALI,**

OFFICE AT:

H-127, SECTOR-63, NOIDA,

UTTAR PRADESH-201301.

(Through: Mr. Rishi K. Awasthi, Advocate)

...Opposite Party

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)****HON'BLE MR. J.P. AGRAWAL, MEMBER (GENERAL)**

Present: Mr. Manoj Dhawan, counsel for the Complainant.
Mr. Avinash Ankit, counsel for the OP.

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

1. The present complaint has been filed by the Complainants before this commission alleging deficiency of service on the part of the Opposite Party and has prayed the following reliefs:
 - a. *“Direct the respondents)/OP to refund the paid amount of Rs.88,62,913/- (Eighty Eight Lakh Sixty Two thousand Nine Hundred Thirteen Rupees) and/or*
 - b. *Direct the respondent(s)/OP to compensate the complainant(s)/buyer(s) in lieu for delay in possession of 84 months and counting and/or*
 - c. *Direct the respondent(s)/OP to pay a pendent elite and future interest @18% p.a. and/or*
 - d. *Direct the respondents)/OP to further pay Rs.10,00,000/- (Ten Lacs Rupees) towards the mental agony/ damages/ compensation and/or*
 - e. *Grant the cost of proceedings and litigation expenses i.e. Rs. 5,00,000/- (Five Lacs Rupees) in favour of the complainant(s)/buyer(s) and against the respondent(s)/OP; and/or*
 - f. *Grant such other order or relief/s which this Hon 'ble Forum may deem fit and proper in the facts and circumstances in favour of the complainant(s)/buyer(s) and against the Opposite Party/ Respondent(s) in the interest of justice.”*
2. The brief facts necessary for the adjudication of the present complaint are that in the year 2012, the original allottees namely Mr. Puneet Gandhi & Ms. Urmila Mehra booked an apartment with the

Opposite Party in the project “Assotech Blith” situated at Dwarka Expressway, Sector-99, Gurugram, Haryana by paying an amount of Rs. 6,50,000/- to the Opposite Parties. Further, a builder buyer agreement dated 07.08.2012 was executed between the original allottees and the Opposite Party. Thereafter, the Opposite Party endorsed the said booking in the name of Complainants. The Complainants paid a total sum of Rs.88,62,913/- as and when demanded by the Opposite Party. The Opposite Party then issued the Demand Letter against a payment of Rs.6,75,145/- to be made by the Complainant without showing any stage of construction update with the actual site/Flat condition. The Opposite Party assured the Complainant that the possession of the said apartment will be handed over to him within 42 months plus a grace period of 6 months from the date of execution of the builder buyer agreement i.e. from 06.08.2012.

3. It is further submitted that the Project is nowhere near completion or habitable and that the possession could not be delivered by the opposite Party in the near future. Aggrieved by this, the Complainants approached this Commission alleging deficiency in service on the part of the Opposite Party.
4. The Opposite Party has filed written submissions and contended that the delay in the completion of the project was due to Force Majeure conditions i.e., various directions from the authorities at different occasions, regarding water shortage and pollution control coupled with labourers and contractors abandoning the work, Covid-19 etc.
5. We have perused the material available on record and heard the counsel for the parties.

6. The fact that the Complainant had been allotted an apartment after the endorsement by the Opposite Parties bearing no. G-801 is evident from the Agreement dated 06.08.2012 (*Annexure/Schedule-D with the present complaint*). Payment to the extent of Rs. 88,62,913/- by the Complainant to the Opposite Party is also evident from the Statement of Account issued by the Opposite Party attached with the complaint (*Annexure/Schedule-E*).
7. The *only issue* which is to be adjudicated is *whether the Opposite Party is actually 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.

8. In the present case, the Complainants contended that Opposite Party assured him to hand over the possession of the said apartment on or before 06.08.2016. However, the Opposite Party failed to handover the possession of the said apartment till date.
9. Relying on the above settled law, we hold that the Opposite Party is deficient in providing its services to the Complainants as the Opposite Party had given false assurance to the Complainants with respect to complete the construction of the said project and had kept the hard-earned money of the Complainants.
10. The Opposite Party further submitted that the delay in the completion of the project was due to Force Majeure conditions i.e., the delay in the completion of the project was due to Force Majeure conditions i.e., various directions from the authorities at different occasions, regarding water shortage and pollution control coupled with labourers and contractors abandoning the work, Covid-19 etc

however, on perusal of record we do not find any evidence which shows us that any force majeure condition caused delay in the said project. We are of the considered view that neither any new legislation was enacted nor any existing rule, regulation or order was amended stopping, suspending or delaying the construction of the said project. It is the sole responsibility of the Opposite Party to complete the construction of the said project within time. The Complainants cannot be tormented due to the faults of the Opposite Party. Therefore, this contention of the Opposite Party is devoid of any merit and is dismissed.

11. 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. 88,62,913/-** 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 **07.06.2024** (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 **07.08.2024**;
- C. Being guided by the principles as discussed above, in case the Opposite Parties fails to refund the amount as per the aforesaid clause (A) on or before **07.08.2024**, 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.

12. 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. 3,00,000/- as cost for mental agony and harassment to the Complainants; and
 - B. The litigation cost to the extent of Rs. 50,000/-.
13. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
14. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
15. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(J.P. AGRAWAL)
MEMBER (GENERAL)

Pronounced On:
07.06.2024

L.R.SM