

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

Date of Institution: 28.02.2019

Date of hearing: 16.08.2024

Date of Decision: 30.09.2024

COMPLAINT CASE NO.- 233/2019

IN THE MATTER OF

MR. D K SANTOSHI,

F-101, JHULELAL APARTMENT,

ROAD NO. 44, PITAMPURA,

DELHI-110034.

(Through: Mr. Himanshu Thakur, Advocate)

...Complainant

VERSUS

TDI INFRASTRUCTURE LTD.,

10, SHAHEED BHAGAT SINGH MARG,

CONNAUGHT PLACE,

NEW DELHI-110001.

(Through: Mr. Vaibhav Agnihotri, Advocate)

...Opposite party

CORAM:

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)

HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: None for the Complainant.

Mr. Abhishek Das, proxy counsel for Mr. Vaibhav

Agnihotri (email: skvva@skvassociates.com), counsel

for the OP.

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

JUDGMENT

1. The present complaint has been filed by the Complainant before this commission alleging deficiency of service and unfair trade practice by the opposite parties and have prayed the following:
 - a) *Award an amount of Rs. 30,26,250/- as paid by the complainant as principal against the consideration of the plot purchased by the complainant, in favour of the complainant and against the Respondents.*
 - b) *An interest at the rate of 12% p.a. be awarded in favour of the complainant and against the Respondents for the period of 29.09.2005 till the refund of the consideration amount as paid by the complainant.*
 - c) *An amount of Rs. 10,00,000/- be awarded in favour of the complainant and against the Respondents for the harassment, compensation, mental agony and trauma, the damages and the litigation costs incurred by the complainant.*
 - d) *Any other relief that the Hon'ble Forum may think fit to be granted to the complainant."*
2. Brief facts necessary for the adjudication of the present complaint are that initially the plot was booked by Mr. Bhawani Shankar Sharma on 29.09.2005 in the project of the Opposite Party at Kundli, Sonipat, Haryana which was further sold/transferred the same to Mr. N.K. Jain and Mr. Rakesh Gupta on 08.11.2006 who further sold/transferred the plot to the Complainant on 03.07.2008. The Complainant paid a consideration amount of Rs. 30,26,250/- from Mr. N.K. Jain and Mr. Rakesh Gupta on 03.07.2008. Thereafter, an allotment letter no. 12521 dated 06.01.2006 was issued by the

Respondent No.1 in favour of the Complainant stating that he has been allotted with J-480, TDI City, Kundli, Sonapat, Haryana measuring 250 sq. yds.

3. Further, on persuasion done by the Complainant regarding the possession of the said plot, the officials of the Opposite Party No.1 assured the Complainant that the possession of the said plot will be delivered within three years from the date of purchase i.e 03.07.2008.
4. The Complainant despite paying the payment well on time, along with the EDC and IDC charges, the possession of the said plot or registry was never done in favour of the Complainant. initial amount agreed by the Opposite Party, the Opposite Party failed to start the project on time and failed to provide Complainant the allotment letter but was just given false assurances.
5. Further, the Opposite Party failed to progress in the plotting and actual construction of the plot of the Complainant or the township. This delay in possession is the cause of grievance of the Complainant, who has thus approached this commission by way of the present complaint.
6. On the other hand, the Opposite Party also filed the written submissions, wherein he submitted that the present complaint is not maintainable as the Complainant is not a consumer under the Consumer Protection Act, 1986. Further, the Opposite Party challenges the territorial jurisdiction of this Commission to entertain the present complaint, citing that the project is in Haryana and thus the appropriate forum therein shall be competent to hear the present complaint.
7. Thereafter, the Complainant filed a Rejoinder in reply to the above.
8. We have perused the material on record and heard the counsels for the parties.

9. The first issue to be adjudicated is *whether the Complainant fall within the ambit of 'consumer' under the Consumer Protection Act, 1986.*
10. The Opposite Party has contended that the Complainants are not *Consumer* as defined under the Consumer Protection Act, 1986 as the plot was purchased for investment i.e. for commercial purposes.
11. 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 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."

10. From the aforesaid dicta of the Hon'ble National Commission, it flows that it is for the Opposite Party to prove that the plot 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 Complainant.
11. In the present case, the Opposite Party has merely made a statement that the Complainants have purchased the plot for commercial purpose and on perusal of the record before us, we fail to find any material which shows that the Complainant is 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 plots. 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 Party is answered in the negative.

12. The next issue for consideration is **whether this commission has the territorial jurisdiction to entertain the present complaint.**

13. To resolve this issue, we deem it appropriate to reproduce section 17 of the Consumer Protection Act, 1986:

“(1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore; and

(ii) appeals against the orders of any District Forum within the State;”

14. Section 17 thus stipulates that this commission has the territorial jurisdiction to entertain a complaint where either the Opposite Party resides or carries on business, or has a branch office, or the cause of action arose.

15. The Opposite Party in the present complaint argues that this commission does not have the appropriate jurisdiction since the property in question is in Sonipat, Haryana. The cause of action can thereby be said to have arisen in Sonipat, Haryana. However, the Opposite Party also has a branch office in Delhi, and thereby still falls within the stipulation of section 17. This commission therefore has the suitable jurisdiction to entertain this present complaint.

16. The main issue for consideration is **whether the Opposite Party is deficient in providing its services to the Complainant.**

17. Having discussed the preliminary objections raised on behalf of the Opposite Party, the next issue which arises is whether the Opposite Party is actually deficient in providing its services to the Complainant or not.
18. 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.

19. Upon perusal of the evidence on record, we find that the Complainant purchased the said plot for an amount of Rs. 30,26,250/- on 03.07.2008. In the present case, the Complainant contended that Opposite Party assured him to hand over the possession of the said plot on or before three years from the date of purchase. However, the Opposite Party failed to handover the possession of the plot till date.
20. 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 handing over the possession of the plot and kept the hard-earned money of the Complainant. Therefore, now the Complainant are not bound to take the possession of the said apartment after the stipulated period.
21. 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. 30,26,250/-** along with simple 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 **30.09.2024** (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 **30.11.2024**;
 - 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 **30.11.2024**, 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.

22. 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. 2,00,000/- as cost for mental agony and harassment to the Complainant; and
- B. The litigation cost to the extent of Rs. 50,000/-.

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

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

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

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:

30.09.2024

L.R.-SMs