

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

Date of Institution:05.02.2020

Date of hearing: 03.09.2024

Date of Decision: 21.10.2024

COMPLAINT CASE NO.- 85/2020

IN THE MATTER OF

- 1. MRS. SUMITA JAIN,
W/O MR. KUNAL JAIN,**
- 2. MR. KUNAL JAIN,
BOTH AT:
C-31, AHINSA VIHAR,
SECTOR-09, ROHINI, DELHI.**

**(Through: Mr. Mukesh Gahlot, Advocate)
...Complainants**

VERSUS

- 1. M/S ANSAL PROPERTIES & INFRASTRUCTURE LTD.,**
 - 2. MR. SUSHIL ANSAL, DIRECTOR,**
 - 3. MR. LALIT BHASIN, DIRECTOR,**
 - 4. MR. YOGESH GAUBA, DIRECTOR,**
 - 5. MR. JAGATH CHANDRA, DIRECTOR,**
 - 6. MR. PRANAV ANSAL, DIRECTOR,**
- ALL AT:
115, ANSAL BHAVAN, 16 K.G. MARG,
NEW DELHI-110001.**

**(Through: Mr. Shaini Bhardwaj, Advocate)
...Opposite Parties**

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)****HON'BLE MS. PINKI, MEMBER (JUDICIAL)**

Present: Mr. Mukesh Gahlot, counsel for the Complainant (email: advocate.mukeshgahlot@gmail.com)
Mr. Shaini Bhardwaj and Ms. Rukhsar, Counsel for the OP (email: shine9st@gmail.com)

**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 Opposite Parties and has prayed the following reliefs:

- a) *To refund the payment of Rs. 27,93,825/- to complainant as the respondent failed to deliver the subject flat to the complainant.*
- b) *To pay the interest at the rate of 12% per annum on Rs. 27,93,825/- from its due date.*
- c) *Rs. 10,00,000/- as compensation of mental pain and agony and harassment of the complainant.*
- d) *Rs.55,000/- as litigation charges.*
Any other relief which this hon'ble court may deem fit and proper in the circumstances of the case may also be granted in favor of the complainant and against the respondents."

2. The brief facts necessary for the adjudication of the present complaint are that the Complainants booked an apartment of area 2196 sq. ft. with the Opposite Parties in the project 'Green Escape Apartments,' situated at Sonipat, Haryana vide cheque dated 01.01.2012. The Complainants paid a booking amount of Rs. 2,14,327/- towards the total consideration of Rs. 42,86,544/-.

Thereafter, the Opposite Parties executed an Apartment Buyer's Agreement dated 14.02.2012 in favor of the Complainants. As per the said agreement, the Opposite Parties was obligated to complete the construction of the project within 42 months with an extended period of 6 months from the date of execution of the agreement dated 14.02.2012 i.e. on or before 14.02.2016. However, the Opposite Parties failed to hand over the possession of the said apartment to the Complainants till date despite diligently following the payment plan and making all payments as demanded. Moreover, the Complainants made several communications regarding the status of the construction of the said project but of no avail. Thus, left with no other option, the Complainant approached this commission, alleging deficiency in service on the part of the Opposite Parties.

3. During the course of proceedings, a notice was issued to the Opposite Parties on 25.02.2020, but it remained unserved. Consequently, a fresh notice was issued to the Opposite Parties vide order dated 18.03.2021, which was served upon the Opposite Parties 12.11.2021. Subsequently, the Opposite Parties failed to file its written statement therefore, the right of the Opposite Party to file its written statement was closed vide order dated 02.08.2022. Consequently, the averments made by the Complainants in the present case remain unrebutted.
4. The Complainants have filed its Evidence by way of Affidavit in order to prove his averments and Written arguments of the Complainants also on record.

5. We have perused the material available on record and heard the counsel for the Complainants.
6. The fact that the Complainants had booked as apartment with the Opposite Parties is evident from the Apartment Buyer's Agreement dated 14.02.2012. (**Annexure- C/1 of the complaint**). Payment to the extent of **Rs. 27,93,825/-** by the Complainants to the Opposite Parties is evident from the statement of account or receipts issued by the Opposite Parties. (**Annexure C/3 and C4**) attached with the **complaint**).
7. The only *question for consideration* before us is *whether the Opposite Party is deficient in providing its services to the Complainants*. 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. At this stage, we deem it appropriate to refer to clause 5.1 of the Agreement dated 14.02.2012 entered into by both the contesting parties. It reflects that the Opposite Parties were bound to complete the construction of the project within 42 months from the date of execution of the agreement or from the date of commencement of construction of the particular Tower/Block in which the said Unit is situated subject to the sanction of the building plan whichever is later, along with a grace period of 6 months. However, the Opposite Parties failed to complete the construction of the said apartment

within prescribed time and failed to hand over the possession of the apartment till date.

9. Furthermore, it is clear from the record that the Complainants had paid a substantial amount of Rs. 27,93,825/- towards the total consideration amount of the said apartment, i.e., Rs. 42,86,544/-. Still, the Opposite Party has failed to explain the inordinate delay in offering possession of the apartment within the prescribed time.
10. Relying on the above settled law, we hold that the Opposite Parties are deficient in providing its services to the Complainants as the Opposite Party had given false assurance to the Complainants with respect to the time for handing over the possession of the said apartment and kept the hard-earned money of the Complainants.
11. Keeping in view the facts of the present case and the extensive law as discussed above, we direct the Opposite Party No.1 to refund the entire amount paid by the Complainants i.e., **Rs. 27,93,825/-** 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 No.1 till **21.10.2024** (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 **21.12.2024**;
 - C. Being guided by the principles as discussed above, in case the Opposite Party No.1 fails to refund the amount as per the aforesaid clause (A) on or before **21.12.2024**, 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 No.1 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 No.1 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/-.
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

(PINKI)
MEMBER (JUDICIAL)

Pronounced On: **21.10.2024**

LR-SM