

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

**Date of Institution: 08.06.2018**

**Date of reserving the order: 11.01.2024**

**Date of Decision: 02.04.2024**

**COMPLAINT CASE NO.- 745/2018**

**IN THE MATTER OF**

**MS. SAPNA KHEMANI**

**W/O MR. BHARAT BHUSHAN KHEMANI**

**R/O H. NO. 30, 2<sup>nd</sup> FLOOR,**

**LAJPAT NAGAR-IV, NATIONAL PARK,**

**NEW DELHI-110024**

**(Through: Mr. Amitesh Giroti, Advocate)**

**...Complainant**

**VERSUS**

**M/S PARSVNATH DEVELOPERS LTD.**

**AT: PARSVNATH TOWER,**

**NEAR SHAHDARA METRO STATION,**

**SHAHDARA, DELHI-110032**

**ALSO AT: 6<sup>th</sup> FLOOR, ARUNACHAL BUILDING,**

**19, BARAKHAMBA ROAD,**

**NEW DELHI-110001**

**(Through: Ms. Deepshikha Mishra, Advocate)**

**...Opposite party**

**CORAM:**

**HON'BLE MR. RAJAN SHARMA, MEMBER (JUDICIAL)**

**HON'BLE MS. BIMLA KUMARI, MEMBER (FEMALE)**

**Present: Mr. Amitesh Giroti, counsel for the Complainant**

**Ms. Deepshikha Mishra, counsel for the OP**

**PER: HON'BLE MR. RAJAN SHARMA, MEMBER (JUDICIAL)**

**JUDGMENT**

1. Brief facts necessary for the adjudication of the present complaint are that the Complainant booked a residential flat with the Opposite Party in the project namely 'Parshvath Castle' at King Citi, Village Dharian, Tehsil Rajpura, District Patiala, Punjab. On 16.11.2007, 'Flat Buyers Agreement' was executed between the parties for residential flat bearing no. T5-101 on First Floor admeasuring 1050 sq. ft. in the abovesaid project. The total basic price of the said flat was of Rs.13,11,450/-. As per clause 9(a) of the said agreement dated 16.11.2007, the Opposite Party had agreed to hand over the possession of the said flat within 36 months from the date of commencement of construction, on receipt of sanction of building plans and all other approvals subject to force majeure including any restraints/restrictions from any authorities, non-availability of building materials or disputes with contractors/work force and circumstances beyond the control of the Developer and subject to timely payments by the Buyers.
2. It has been stated by the Complainant that from the period 2007 to 2011, she had paid a total sum of Rs.9,35,725/- to the Opposite Party, as and when the same was demanded by the Opposite Party.
3. It is the case of the Complainant that despite having paid more than 70% of the consideration amount of the said flat, as per the demands made by the Opposite Party, from time to time, the Opposite Party failed to hand over the possession of the said flat as promised in the agreement. As and when the Complainant requested the Opposite Party to apprise her about the status of the construction, the Opposite Party failed to give any plausible reply. As there was no hope that the Opposite Party would issue

possession of flat and there being a delay of more than seven years in handing over possession, the Complainant sent a legal notice dated 09.04.2018 to the Opposite Party seeking refund of her entire money along with interest, but the Opposite Party did not even respond to the same.

4. Thus, the Complainant was left with no other option but to file the present complaint on 08.06.2018 alleging deficiency of service and unfair trade practice on the part of the Opposite Party.
5. When the present complaint case was filed by the Complainant, notice of the complaint was issued to the Opposite Party on 16.07.2018.
6. Upon service, the Opposite Party filed the written statement on 10.04.2019 wherein it was stated that the delay in completing the project was due to global economic slowdown, experienced by the real estate sector in the country and the Complainant was irregular in making payments of the flat. The Opposite Party had also raised preliminary objections as to the maintainability of the complaint case. The Opposite Party contended that the Complainant is not a "Consumer" as she is a resident of Delhi and by booking this flat her sole purpose was to make profit. The Opposite Party further contended that the present complaint is barred by limitation because the Buyers agreement was executed between them in the year 2007 and the present complaint was filed after a period of 11 years. The Opposite Party further contended that the present complaint is filed without any cause of action and the present complaint involves complicated questions of law.
7. The Complainant filed rejoinder rebutting the averments made in the written statement filed by the Opposite Party. The

Complainant has also denied the allegations raised by the Opposite Party and recapitulated the facts stated by her in the complaint.

8. The Complainant had filed her evidence by way of affidavit in order to prove her averments on record.
9. The Opposite Party had also filed evidence by way of affidavit in order to prove its averments on record. Evidence by way of affidavit is duly supported by an affidavit of Mr. Ajay Kashyap S/o Late Mr. H.R. Kishore, General Manager of the Opposite Party/company.
10. Written arguments were also filed on behalf of both the parties.
11. We have perused the material available on record and heard the counsel for both the parties.
12. The fact that the Complainant had booked the residential flat with the Opposite Party is evident from 'Flat Buyers Agreement' dated 16.11.2007 (*annexed with complaint*) executed between the parties. And the payment to the extent of Rs.9,35,725/- received by the Opposite Party, is evident from the photocopies of the ledger dated 29.04.2011 issued by the Opposite Party (*annexed at page no. 50 & 51 of the complaint*).
13. The **first question** for adjudication before us is "**whether the Complainant is a "Consumer" as defined under the Consumer Protection Act.**"
14. To resolve this issue, we deem it appropriate to refer to **Aashish Oberai Vs Emaar MGF Land Limited** reported in **I (2017) CPJ 17(NC)** wherein it is held as under:

*"6. .... A person cannot be said to have purchased a house for a commercial purpose only by proving that he owns or had purchased more than one houses or plots. In a given case, separate houses may be purchased by a person for the individual use of his family members. A person owning a house in a city A may also purchase a*

*house in city B for the purpose of staying in that house during short visits to that city. A person may buy two or three houses if the requirement of his family cannot be met in one house. Therefore, it would not be correct to say that in every case where a person owns more than one house, the acquisition of the house is for a commercial purpose.”*

15. It is also 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.”*

16. From the aforesaid dicta of the Hon’ble National Commission, it flows that it is for the Opposite Party to prove that the flat 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.
17. In the present case, the Opposite Party has merely made a statement that the Complainant purchased the flat 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 flats. 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.

18. The **second question** for adjudication before us is “**whether the complaint is barred by limitation and whether the Complainant has any cause of action to approach this Commission under the Consumer Protection Act, 1986.**”

19. To adjudicate this issue, it is imperative to refer Section 24A of the Consumer Protection Act, 1986:

*“24A. Limitation Period.- (1) The District Forum, 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 had 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 Forum, 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 National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.”*

20. Analysis of Section 24A of the Consumer Protection Act, 1986 shows 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.

21. We 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:

*“The Opposite Party contested the complaint as being barred by limitation prescribed under section 24(a) of the Consumer Protection Act, 1986 since the last date stipulated in the buyers' agreement for giving possession of the flat expired more than 2 years ago. 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. It is only when the seller virtually refused to give possession, that the period of limitation prescribed under section 24(a) of the Consumer Protection Act, 1986 would start. The Complainant has to file a case within two years from the date of refusal of delivery of possession to the buyer. In the present case, the Opposite Party has not refused possession of the flat to the complainants at any point of time. Therefore, the cause of action continues to subsist in favour of the Complainant.”*

22. Applying the above settled law and considering the fact of the case that the Opposite Party has not refused, at any point of time, to hand over the possession of the flat to the Complainant and also avoided to give any plausible reply for the delay in handing over possession of the flat. It is worth noting that the possession of the said flat is still pending; giving the Complainant a recurrent cause of action to file the present complaint. Thus, we hold that the cause of action continues to subsist in favour of the Complainant and the present complaint is within the period of limitation and not barred by limitation.
23. The **third question** for adjudication is **“whether the present complaint involves complicated question of facts and law, which should be decided by the civil court.”**
24. To resolve this issue, it is imperative to refer to the dicta of the Hon’ble Supreme Court in **J.J. Merchant Versus Shrinath Chaturvedi (2002) 6 SCC 635** wherein it was inter alia held by the Hon’ble Supreme Court as under:

*“Under the Act the National Commission is required to be headed by a retired Judge of this court and the State Commission is required to be headed by a retired High Court Judge. They are competent to decide complicated issues of law or facts. Hence, it would not be proper to hold that in cases where negligence of experts is alleged, consumers should be directed to approach the civil court. It was further held that merely because it is mentioned that*

*the Commission or Forum is required to have summary trial would hardly be a ground for directing consumer to approach the civil court. For the trial to be just and reasonable, long-drawn delayed procedure, giving ample opportunity to the litigant to harass the aggrieved other side, is not necessary. It should be kept in mind that the legislature has provided alternative, efficacious, simple, inexpensive and speedy remedy to the consumers and that should not be curtailed on such ground. It would also be a totally wrong assumption that because summary trial is provided, justice cannot be done when some questions of facts are required to be dealt with or decided. The Act provides sufficient safeguards.”*

25. Returning to the facts of the present complaint, and the perusal of the record shows that the Complainant had availed the services of the Opposite Party for a consideration. However, the Opposite Party failed to handover the possession of the said flat within the stipulated time, aggrieved by which, the Complainant has sought refund of her money along with the compensation for delay from the Opposite Party, but the Opposite Party has failed to do so. Hence, the Complainant is entitled to file the present complaint before this Commission since the Complainant is aggrieved by the deficient services of the Opposite Party i.e., the failure of the Opposite Party to handover the possession within stipulated time.
26. Moreover, nothing cogent has been brought on record by the Opposite Party which would reflect that there are such complicated questions involved which cannot be settled on the basis of the pleadings filed on behalf of the contesting parties. Consequently, we are of the view that the present complaint falls within the four corners of the jurisdiction of this commission.
27. The **fourth question** for adjudication is “**whether the Opposite Party is deficient in providing its services to the Complainant or not.**”



28. 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.*

29. At this stage, we deem it appropriate to refer to Clause No. 9(a) of the 'Flat Buyers Agreement' dated 16.11.2007 entered

between the contesting parties. It reflects that the Opposite Party was duty bound to hand over the possession of the said flat within 36 months from the date of commencement of construction. Further, it is noteworthy that the basic price of the said flat was of Rs.13,11,450/- and the Complainant had already paid an amount of Rs.9,35,725/- to the Opposite Party and that too way back in the year 2011. However, till date neither the construction of the said project has been completed by the Opposite Party nor the possession of the said flat has been delivered to the Complainant.

30. In these circumstances, it is clear that the Opposite Party failed to offer possession of the said flat within the stipulated period. Consequently, we hold 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 said flat and kept the hard-earned money of the Complainant for about 13 years.
31. 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.9,35,725/-** 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 **02.04.2024** (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 **01.06.2024**;

- 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 **01.06.2024**, 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.
32. 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.1,00,000/-** as cost for mental agony and harassment to the Complainant; and
  - B. The litigation cost to the extent of **Rs.50,000/-**.
33. Accordingly, the complaint filed by the Complainant is hereby allowed.
34. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
35. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
36. File be consigned to record room along with a copy of this Judgment.

**(RAJAN SHARMA)**  
**MEMBER (JUDICIAL)**

**(BIMLA KUMARI)**  
**MEMBER (FEMALE)**

Pronounced On: 02.04.2024