

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

**Date of Institution: 01.08.2017**

**Date of hearing: 11.01.2024**

**Date of Decision: 02.04.2024**

**COMPLAINT CASE NO.- 1299/2017**

**IN THE MATTER OF**

**MR. D.P. DHANKAR,  
FLAT NO. 702, ITBP HOUSING SOCIETY,  
PI SECTOR, GREATER NOIDA: 201306,  
UTTAR PRADESH.**

**(Through: Sudhir Kathpalia and Associates)  
...Complainant**

**VERSUS**

**M/S BELGRAVIA PROJECTS PVT. LTD.,  
REGISTERED OFFICE,  
1497, FIRST FLOOR, BHARDWAJ BHAWAN,  
BHISHM PITAMAH MARG,  
NEW DELHI: 110003.**

**(Through: Ms. Tanvi Garg and Ms. Pallavi Tayal, Advocates)  
...Opposite Party**

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

Present: Mr. Rahul Goyal, counsel for the Complainant.  
Mr. Niraj Kr. Singh, counsel for the OP.

**PER: HON'BLE 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 Party and has prayed the following:

- a. *It is therefore, respectfully prayed that the Notice dated 09.05.2017 may pleased be set aside and the demand of Rs. 1,15,000/- on account of holding charges and demand of Rs.44,184/- on account of maintenance charges may be quashed;*
- b. *Direct the opposite party to hand over the physical possession of Flat No.1101, Tower-B, Raj Nagar Extension, Ghaziabad to the Complainant after removing of defects and completing all required repairs therein and further to direct to execute the sale deed;*
- c. *Direct the opposite party to pay quarterly compound interest @ 18% from 01.11.2012 till the date of delivery of possession or payments of amounts including interest and compensation which ever is later;*

- d. Direct the opposite party to pay Rs.5,00,000/- (Rupees Five Lacs only) for mental harassment with quarterly compound interest @ 18%;*
- e. direct the opposite party to pay Rs. 1,00,000/- on account of litigation charges;*
- f. or to issue any other order and direction which this Hon'ble deems fit under the peculiar circumstances of this case in favour of the complainant and against the opposite party;*
2. Brief facts necessary for the adjudication of the present complaint are that the Complainant applied for the allotment of a flat in the project 'Brave Hearts' of the Opposite Party, situated in Ghaziabad, Uttar Pradesh. Subsequently, the Opposite Party vide an allotment letter dated 28.08.2010, allotted flat no. B-1101 in the aforementioned project to the Complainant and a buyer-seller agreement was executed between the parties on 28.08.2010. As per clause 9.1 of the said agreement, the Opposite Party was to hand over possession of the flat within 2 years plus 2 months from the date of execution of the agreement. However, the Opposite Party failed to hand over possession of the flat to the Complainant till date. Additionally, the basic cost of the flat was Rs. 23,10,000/- and the Complainant had paid the total amount of Rs. 26,34,213/- as and when demanded by it. Subsequently, the Complainant came to know that the Opposite Party failed to complete the construction of the project, therefore, also failed to obtain an occupation certificate from the concerned authority. Furthermore, the Complainant was shocked to receive a

demand letter dated 09.05.2017, demanding an illegal and arbitrary amount of Rs. 1,15,000/- on the account of holding charges and Rs. 44,184/- for maintenance charges and meter charges amounting to Rs. 56,252/-, but meter charges were already paid by the Complainant. Aggrieved by the actions of the Opposite Party, the Complainant sent a legal notice dated 01.06.2017 to withdraw the illegal amount demanded by it vide letter dated 09.05.2017 and deliver possession of the flat along with interest but to no avail. Thus, left with no other option, the Complainant approached this commission alleging deficiency on the part of the Opposite Party.

3. During the course of proceeding, notice was issued to the Opposite Party vide order dated 25.08.202017. However, the Opposite Party filed its written statement after the expiry of the stipulated period. Therefore, this commission vide order dated 29.08.2018 did not take the written statement on record and relied upon *Civil Appeal No.10941-10942 of 2013 titled as New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd. dated 04.12.2015*. Since the written statement of the Opposite Part was not taken on record, the present complaint remains un rebutted.
4. The Complainant has filed its evidence by way of affidavits and written arguments.
5. The Opposite Party has filed written arguments and has raised preliminary objections as to the maintainability of the complaint case. The counsel for the Opposite Party that the present complaint is barred by limitation as per Section 24A of the Consumer Protection Act, 1986 and there is no cause of action in favour of the Complainant

- to file the present complaint. He further submitted that this commission does not have pecuniary jurisdiction to adjudicate the present matter.
6. He also submitted that this commission does not have the territorial jurisdiction to try and entertain the present complaint as the subject property in question is situated beyond the territorial jurisdiction of this commission. Pressing the aforesaid objections, the counsel appearing on behalf of the Opposite Party argued that the present complaint be dismissed.
  7. We have perused the material available on record and heard the counsel for the parties.
  8. The fact that the Complainant had booked a flat with the Opposite Party is evident from the Buyer Seller Agreement dated 28.08.2010 (*Annexure at pg. 28*). Payment to the extent of Rs. 26,34,213/- by the Complainant to the Opposite Party is evident from the receipts issued by the Opposite Party.
  9. **The first question for consideration is whether the present complaint is barred by limitation as per the consumer protection act, 1986?**
  10. The Opposite Party has contended that the present complaint is barred by limitation as per Section 24A of the Consumer Protection Act, 1986. It is imperative to refer to *Section 24A of the Consumer Protection Act, 1986*, which provides as under:
    - 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 has 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.”

11. A perusal of the above statutory provision of law reflects that the complaint shall be filed before the State Commission within two years from the date on which the cause of action has arisen. It is clear from the record that till date neither possession of the said flat has been delivered nor the amount has been refunded to the Complainant by the Opposite party. We further deem it appropriate to refer to **Mehnga Singh Khara and Ors. Vs. Unitech Ltd.** as reported in **I (2020) CPJ 93 (NC)**, wherein the Hon’ble National Commission has held as under:

*“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.”*

12. Relying on the above settled law, it is clear that failure to deliver possession being a continuous wrong constitutes a recurrent cause of

action in favour of the buyer and therefore, till the time possession is not delivered to the Complainant, he is within right to file the present complaint before this commission. Consequently, the present complaint is not barred by limitation as per Section 24A of the Act.

13. **The second question for consideration is whether this commission has pecuniary jurisdiction to adjudicate the present complaint?**

14. The Opposite Party contended that this commission does not have the pecuniary jurisdiction to adjudicate the present complaint. We deem it appropriate to refer to Section 17 of the Consumer Protection Act, 1986 which provides as under:

*“(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; and*

*(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.*

*(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction-*

*(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the*

*institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or*

*(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or*

*(c) the cause of action, wholly or in part, arises.”*

15. Analysis of Section 17 of the Consumer Protection Act, 1986 leads us to the conclusion that this commission shall have the pecuniary jurisdiction in cases where the total claim including the compensation is more than twenty lakhs and less than One Crore.
16. Having discussed the statutory position, the facts of the present case reflect that the value of the flat and the compensation prayed for by the complainant is beyond Rs. 20 Lakhs but does not exceed Rs. 1 Crore, accordingly, this commission has the pecuniary jurisdiction to deal with the present complaint.
17. **The next question for adjudication is whether this commission has territorial jurisdiction to decide the present complaint?**
18. The counsel for the Opposite Party has raised an issue relating to the jurisdiction of this commission to try the present suit. He further submitted that this commission has no territorial jurisdiction as the property in question is beyond the jurisdiction of this commission.

19. The jurisdiction of consumer commissions to entertain cases of this nature has been settled via array of judgments. We tend to rely on the dicta of *Hon'ble Supreme Court in Narne Construction P. Ltd., etc. v. Union Of India and Ors. Etc., reported at AIR 2012 SC 2369*, wherein it was held that “when a person applies for the allotment of a building or site or for a flat constructed by the Development Authority and enters into an agreement with the Developer, or the Contractor, the nature of transaction is covered by the expression 'service' of any description. Housing construction or building activity carried on by a private or statutory body constitutes 'service' within the ambit of Section 2(1)(o) of the Act and any deficiency or defect in such service would make it accountable before the competent consumer forum at the instance of consumers”.
20. The Hon'ble National Commission in the case of *Rohit Srivastava v. Paramount Villas Pvt. Ltd. reported at 2017 SCC OnLine NCDRC 1198*, has held as under:

“Having heard learned Counsel for the parties at some length, we are of the opinion that the order cannot be sustained. It is not in dispute that the Registered Office of Opposite Party No. 1 Company is situated in Delhi, i.e., within the territorial jurisdiction of the State Commission at Delhi and therefore, in the light of clear provision contained in Section 17(2)(a), which stipulates that a Complaint can be instituted in a State Commission, within the limits of whose jurisdiction, the Opposite Party actually carries on business. In view of the said provision, we have no hesitation in coming to the conclusion that since the Registered Office of the first Opposite Party is situated in Delhi, the State Commission did have the territorial jurisdiction to entertain the Complaint. In the light of the said

*provision, in our view, it was open to the Complainant to choose the Forum to file the Complaint, which on the second occasion he decided to file before the State Commission at Delhi.”*

21. Relying on the above settled law, there is no iota of doubt that this commission has the jurisdiction to entertain the cases relating to allotment agreement including delay in handing over possession of the said flat, as compensation for delay in handing possession is sought due to the deficient services of the opposite party and not for any other reason. Moreover, the Opposite Party has a registered office at 1497, First Floor, Bhardwaj Bhawan, Bhishm Pitamah Marg, New Delhi -110003, till which, the jurisdiction of this commission extends. Therefore, this commission is fully empowered to adjudicate the present consumer complaint and is not paralyzed due to the want of territorial jurisdiction.
22. 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.*** 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.*

23. At this stage, we deem it appropriate to refer to clause 9.1 of the Buyer Seller Agreement 28.08.2010 entered into by both the contesting parties. It reflects that the Opposite Party was bound to complete the construction of the said flat within 2 years plus 2 months

- from the date of execution of the said agreement. However, till date the possession of the said flat is not handed over to the Complainant.
24. Additionally, it is evident from the records that the Complainant had paid Rs. 23,39,307/- towards the basic cost of the flat, specifically Rs. 23,15,000/- by 01.11.2014. However, it is admitted that the opposite party delayed in obtaining the completion certificate from the relevant authority. It is well-established legal principle that the opposite party cannot offer possession without the occupation and completion certificates. Thus, it is evident that the Complainant made timely payments for the flat, but it was the opposite party that caused the delay in completing the construction project. Consequently, the complainant cannot be compelled to pay holding and maintenance charges. Therefore, we hold that the demand letter dated 09.05.2017 issued by the opposite party for demanding holding charges arbitrary and unjust. Furthermore, no evidence has been placed by the Complainant to show us that he had paid the dual meter charges therefore is bound to pay meter charges.
25. 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 said flat and kept the hard-earned money of the Complainant.
26. Now the only question remains that how much Opposite Party is liable to pay compensation for delay in handing over the possession of the said plot. To deal this issue we deem it appropriate to refer *Arifur*

***Rahman and Aleya Sultana and Ors. V. DLF Southern Homes Pvt. Ltd. Where apex court modified NCDRC:***

*“11 Accordingly, we allow the appeals in part to the following extent:*

***(i) The compensation on account of delay in handing over possession of the flats to the flat buyers is reduced from 7% to 6%; and***

*12 We clarify that the directions of the NCDRC are upheld, save and except, for the above two modifications in terms of clauses (i) and (i) above. The payment at the rate of 6% per annum shall be made after making due adjustments for the compensation for delay at the contractual rate (where it has been paid in terms of the agreement to the flat purchasers). The order shall be complied with within a period of two months from today.”*

27. Relying upon above dicta and keeping the fact and circumstances of the case, ***we direct the Opposite Party to deliver the physical & vacant possession of said flat (Complete in all respect) to the Complainant within two months from the date of this judgment along with compensation on account of delay in handing over possession i.e., simple interest of 6% per annum upon the total consideration amount paid by the Complainant i.e., Rs. 26,34,213/- for a period from 28.10.2012 till the date of actual handing over the possession of the said flat.***
28. In addition to the aforesaid and taking into consideration the facts of the present case, the Opposite Party is directed:
- 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/-.

29. The Opposite Party is directed to comply with the directions passed in Para 28 of this judgment within two months from the date of this judgment, failing which, the Opposite Party has to pay simple interest @ 9% per annum on total sale consideration of **Rs.26,34,213/-** from 28.10.2012 till the handing over the possession of the said flat.
30. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
31. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
32. File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)**  
**PRESIDENT**

**(PINKI)**  
**MEMBER (JUDICIAL)**

Pronounced On:

**02.04.2024**

LR-ZA