

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

**Date of Institution : 12.08.2016**  
**Date of Reserving the order: 09.05.2024**  
**Date of Decision : 14.06.2024**

**C No. 932/2016**

**IN THE MATTER OF**

1. Sanjeev Parashar  
S/o Sh. M.K. Sharma  
R/o A-108, First Floor, Palladians,  
Mayfield Garden, Sector 47, Gurgaon, Haryana-122001
2. Ms. Vineeta Parashar  
W/o Sh. Sanjeev Parashar,  
R/o A-108, First Floor, Palladians,  
Mayfield Garden, Sector 47, Gurgaon, Haryana-122001

**(Through: Mr. Pradeep Mishra, Advocate)**

**.....Complainants  
VERSUS**

M/s M2K Infrastructure Pvt. Ltd.  
Having registered office at:  
E-13/29, Harsh Bhawan,  
Connaught Circus, New Delhi-110001

**(Through: Mr. Kauhsal Budhia., Advocate)**

**.....Opposite Party**

**HON'BLE MS. PINKI, MEMBER (JUDICIAL)**

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

Present: Mr Pradeep Mishra counsel for the complainant  
Mr Kaushal Budhia counsel for the opposite party

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

**ORDER**

1. Brief facts of the case are that the complainants booked a residential unit with the opposite party in November 2006 in its project namely **"M2K County Heights"** at Dharuhera, Haryana and paid a sum of Rs 3 lakhs towards booking amount. They made a further payment of Rs 2 lakh vide cheque number 172752 dated 21.02.2007 drawn on UTI Bank limited as per the demand of opposite party. On 13.08.2007, the opposite party issued Allotment Advice cum demand note for a provisional unit No. A-102 Tower A measuring 1375 Sqft. in its project. On 07.09.2007, the complainants made further payment of Rs 2,19,469/- vide cheque dated 07.09.2007 bearing number 558287 drawn on UTI Bank limited.

2. It is further case of the complainants that on 10.4.2008 the Builder Buyer Agreement dated 10.04.2008 was executed between the complainants and the opposite party. And as per the agreement the possession of the flat was to be given by the opposite party within 3 years from the date of commencement of construction with a grace period 6 months. The opposite party also agreed to pay compensation to the complainants @ Rs 5 per Sqft. per month for the period of delay in offering the delivery of the said apartment. The complainants adhered the payment plan. Thereafter, the opposite party demanded another sum of Rs 1,89,587/- and the complainants paid that amount also to the opposite party vide cheque bearing number 662800 dated 14.07.2008 drawn of Axis Bank Limited. The opposite party further demanded a sum of Rs 1,26,913/- and the complainants paid that amount to the opposite party vide cheque No. 963064 dated 23.10.2008 drawn on Axis bank limited.

3. It is the further case of the complainants that no construction was going on site, despite the fact that they were making the payments on due dates, expecting the opposite party to complete the project in schedule time and to hand over possession. However, the opposite party in August 2009 put another demand of Rs 1,44,900/- and the complainants paid that amount vide cheque number

136481 drawn on Axis bank limited. Thereafter, the complainants paid another sum of Rs 2,89,275/- to the opposite party vide cheque dated 19.10.2009 bearing number 040042 drawn on IDBI Bank Limited. The complainants had paid a total sum of Rs 14,70,144/- till October 2009 and all the payments were made by them after the same were raised by the opposite party. However in October 2009, the opposite party completely stopped the construction activities on the site and no communication was done with the complainants as to why the construction on the site was withheld by the opposite party. The complainants had invested their savings in the hope of a home and they repeatedly contacted the opposite party in respect of its project and handing over the possession but the opposite party avoided the complainants and did not give any satisfactory answer.

4. It is the further case of the complainants that they personally visited the office of the opposite party at Connaught Circus, Delhi in September 2010 and requested the opposite party to refund their amount with interest. However, the opposite party clearly refused to return the amount and proposed to offer an alternative unit in other tower of the project, which they intended to construct. Thereafter, the complainants wrote an e-mail to the opposite party on 14.09.2010 and requested it either to refund their money with interest or to

allot an alternative good unit in other towers. But, the opposite party conveniently preferred not to respond to their e-mail. Thereafter, the complainants wrote another e-mail to the opposite party on 13.04.2011 and stated that they had lost confidence and asked the opposite party to refund their money with interest. However, the complainants did not get any response from the opposite party. Thereafter, they again visited the office of the opposite party on 19.12.2012, where the opposite party verbally offered three alternative units, in other towers. The complainants wrote another email to the opposite party on 21.12.2012 and asked to allot an alternative unit in other tower with the conditions that the original agreement would remain in force and the opposite party would adjust penalty for delayed possession in the balance payment.

5. It is the further case of the complainants that possession of flat was to be given by the opposite party in March 2010, as per agreement, but they were not having any hope even of construction. After many telephonic communications, the opposite party sent a letter on 23.12.2014 regarding the revision of allotment from unit No. A 102 to F-407 i.e. Tower F 4th floor and asked the complainants to submit the Original Apartment Buyer Agreement dated 10.04.2008, Payment Receipts and Provisional Allotment letter of unit No. A-102. The complainants were left

with no other option but to accept the offer of the opposite party as they had already paid huge amount. Lastly, the complainants accepted the offer unit with the following conditions:

*“a. The date of execution of the buyer builder agreement must remain same as first agreement so that all penalties for delayed possession would be applicable.*

*b. The amount of penalty with interest should be applicable over the Opposite Party for the delayed possession, and must be adjusted in balance payment.*

*c. PLC charges will not be applicable as the location was not preferential in any manner.”*

6. Thereafter, the opposite party asked the complainants to pay a sum of Rs 8,36,741/- vide Demand Note dated 10.02.2015 and the complainants expecting the possession of flat paid that amount vide cheque no. 000004 dated 02.03.2015 for a sum of Rs 5,00,000/- drawn on HDFC Bank and a sum of Rs 3,36,741/- vide cheque bearing no. 017384 dated 23.03.2015 drawn on Central Bank of India. Thereafter, the opposite party asked the complainants to pay Enhanced External Development Charges (EDC) which were contrary to the terms of

the initial agreement and was unfair trade practice on the part of the opposite party. The complainants had deposited a total sum of Rs 23,06,885/- with the opposite party and already submitted the Original Apartment Agreement executed on 10.04.2008 against the Apartment No. A-102 along with Nine money receipts and provisional Allotment letter dated 13.08.2009. After the submission of documents, the opposite party asked the complainants to sign the Buyer Agreement dated 31.07.2015 for the new unit. Thereafter, the opposite party sent Possession letter cum Demand note to the complainants on 22.03.2016 against the new Apartment No. F- 407 in its project i.e. **“M2K County Heights”** Sector-5, Dharuhera, Haryana and demanded a sum of Rs 3,08,183/- from the complainants including unreasonable amount of Rs 1,00,635/- towards Essential facilities Charges and utilities connection charges which was unfair on the part of the opposite party, as the same were not mentioned in the payment plan attached with the Buyer Agreement.

7. It is the further case of the complainants that after getting the possession letter from the opposite party they visited the site to see the current status of the apartment but were shocked to find that the finishing and service work of the flat was incomplete in all respects. Since, the flat was not ready for the possession the complainants did not pay the aforesaid amount of Rs 3,08,813/- and

informed the opposite party on 22.04.2016 that the basic work of the flat was not complete and the flat was not having basic requirements of water and electricity. The complainant also found that kitchen doors of the flat were not in the working condition and the plumbing work was also not complete. The external facade and railing work were not finished and the painting and plastic work was also not done by the opposite party. The opposite party was charging the External Development Charges as well as Internal Development Charges but no such facilities were provided by the opposite party in the said flat. At the time of booking, the complainants were assured by the opposite party that the construction would start soon, as required permission and license for the project were already taken by the opposite party from the concerned authorities. But the possession was offered by the opposite party in March 2016 only which was to be given in March 2010. Till date, the sale deed of the flat has not been executed and the opposite party is not giving any satisfactory reply to the complainants. The complainants have also come to know from the reliable sources that the opposite party is not having requisite clearances for the project and the completion certificate is not issued by the DTCP. The opposite party was having an intention to dupe the complainants from the outset and despite making the payment by the complainants, the opposite party has failed to complete its part of contract. The quality of the construction is also



extremely poor and therefore the complainants are not interested to take possession of the flat. The complainants have prayed that opposite party be directed to refund the amount of Rs 23,06,885/- along with interest @ 24% per annum from the date of deposit till the payment is received by them. The complainants have also claimed a sum of Rs 20 lakhs towards mental agony and harassment.

8. The opposite party has filed the written statement, wherein it has prayed for dismissal of the complaint by submitting that the construction of the apartment is complete as Occupancy Certificate has already obtained on 22.03.2016. The possession of the flat was offered to the complainants on 22.03.2016 but the complainants filed this complaint on 12.08.2016. The complainants want to take advantage of their own wrongs. As per the Agreement, if the complainants want cancellation of the allotment of the flat No. F- 407, the amount will be refunded to them after forfeiting the earnest money. There is no deficiency in service or unfair trade practice on part of the opposite party. The complainants have not only concealed the material facts from the commission but also spread lies about the opposite party and its project. The complainants themselves have failed to take physical possession of the flat and complete the necessary documentation formalities and the payment

of balance amount to Rs 3,08,813/-. More than hundred numbers of persons had already taken possession in the project and residing happily. The opposite party has claimed the enhanced external development charges as per structure demand of HUDA dated 14.03.2013. The relief claimed by the complainants cannot be adjudicated upon by the commission as the same is falling within the purview of the Civil Court. The complainants have misused the process of law and wrongly invoked the jurisdiction of the commission because as per Article 15 of the Apartment Buyer Agreement any dispute arising out of or touching upon or in relation to the terms of Apartment Buyer Agreement etc would be settled through arbitration. The Commission has no pecuniary jurisdiction to entertain the present complaint.

9. The complainants have filed rejoinder to the written statement of the opposite party, wherein they have denied the facts submitted by the opposite party and re-affirmed the facts stated by them in their complaint. They have submitted that mere offer the possession does not absolve the opposite party of all the liabilities. The agreement has to be read as a whole and not in a piece meal. After getting the offer of the possession they visited the site but shocked to find that the flat was incomplete in all respects. No complicated questions of facts and law are

involved in the present case, which cannot be adjudicated by this commission. The Consumer Protection Act is having overriding effect on the other provisions of law.

10. The complainant has filed the evidence by way of his affidavit as well as the affidavit of his wife i.e. complainant No. 2 Mrs Vineeta Parashar.

11. The opposite party has also filed the evidence by way of affidavit of Sh Manoj Kumar, authorized signatory of the opposite party.

12. Both parties have also filed their written synopsis.

13. We have perused the material on record.

First of all, we would like to deal with the preliminary objections taken by the opposite party.

**Whether the complaint is involving complicated question of facts and law.**

To resolve this issue we would like to refer to the judgment of Hon'ble Supreme Court, in **J.J. Merchant Verus Shrinath Chaturvedi (2002) 6 SCC 635 wherien** it was inter alia held 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.”*

14. In the present case, the complainants are seeking refund of their money which they have invested in the project of opposite party with the hope to get a flat in scheduled time. It is worth noting that during arguments learned counsel for the complainants has also

submitted that the complainants are not interested in taking possession of the flat and only want refund of their amount. In the present case, the complainants had booked the flat in the project of the opposite party in the year 2006 and paid a sum of Rs 23,06,889/- in order to hire the services of the opposite party. However, the opposite party did not complete the construction in time and failed to hand over the possession to the complainants as per agreement. The opposite party has offered the possession in March 2016, but as per the case of the complainants the flat is not in a habital condition and certain works are not complete. They have clearly deposed that the quality of the construction is very poor and they are not willing to take possession of flat.

**Further, In Fortune Infrastructure & Anr. Vs. Trevor D'Lima & Ors.3 (2018) 5SCC442 it was held as under:-**

**"a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with compensation".**

**Further, in m. Prerna Rai & ors. Vs m/s Triashul Developers & ors IV (2022) CPJ 277 (NC) it was held as under:-**

***"Buyer cannot be expected to wait indefinitely for possession and in a case of unreasonable delay in offering possession, he cannot be compelled to accept possession at a belated stage and is entitled to seek refund of amount paid with compensation".***

15. In these facts, we are of the considered view that no complicated question of facts and law are involved in the present case and the complaint filed by the complainant can be decided by this commission. Moreover, even the complicated questions can be decided by the commission in view of the settled law, discussed above.

16. Accordingly, this contention of the opposite party in this regard is answered in negative.

**Whether this commission has pecuniary jurisdiction to adjudicate the complaint.**

The opposite party has contended that this commission does not have the pecuniary jurisdiction to adjudicate the present complaint.

To deal with this contention, we would like to refer Section 17 of the Consumer Protection Act, 1986 which runs as below:

*“(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 irregularities.*

(2) .....

17. 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. The present case reflects that the complainants have filed the complaint for the refund of Rs 23,06,885/-. In these circumstances, we are of the considered view that this commission has the pecuniary jurisdiction to deal with the present complaint.

**Effect of Arbitration Clause in the Agreement**

18. It is the case of the opposite party that this commission has no jurisdiction to entertain the complaint because as per the Apartment Buyer Agreement, the dispute has to be referred to the arbitrator.

To deal with this issue, we would like to refer **the judgment passed in Emmar MGF Land Limited vs. Aftab Singh 1 (2019) CPJ 5 (SC)**, wherein it was inter-alia held by the Hon'ble Supreme Court as under:-

*“We may, however, hasten to add that in the event a person entitled to seek an additional special remedy provided under the statutes does not opt for the additional/special remedy and he is a party to an arbitration agreement, there is no inhibition in disputes being proceeded in arbitration. It is only the case where specific/special remedies are provided for and which are opted by an aggrieved person that judicial authority can refuse to relegate the parties to the arbitration.”*

The Hon'ble Apex Court has put to rest the controversy relating to the existence of arbitration clauses in the allotment letter/apartment buyer agreement etc. as is evident from the relevant paragraph of Emaar MGF Land Limited (supra). In the present case also, the complainant has opted for the special remedies provided under the Consumer protection Act, 1986 therefore, this commission can refuse to relegate the present case to the arbitration. Hence, this commission is authorised to adjudicate the case and the existence of an arbitration clause in the agreement does not affect the jurisdiction of this commission.

**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.”*

19. In the present case, the complainant had booked the flat in the project of opposite party in the year 2006 and paid a sum of Rs 3 lakhs towards booking amount. Further, as per Apartment Buyer Agreement dated 10.04.2008, the construction of the apartment was to be completed by the opposite party within a period of 36 month from the date of commencement of the construction of the particular tower in which the apartment was located with a grace period of six month. However, no time was mentioned in the agreement as to when the construction of the tower will be commenced by the opposite party.

20. It is settled law that the constructions of the project has to be commenced within a reasonable time. Further, the opposite party has not stated any reasons/grounds, which were beyond the control of the opposite party and due to which the construction could not be completed by them within the stipulated period. It is worth noting that as per Article 3 of the Apartment Buyer Agreement, the total sale consideration of the flat was Rs 24,82,359/- and the complainants have already paid a sum of Rs 23,06,885/- to the opposite party which is clear from the receipts issued by the opposite party. (page no. 30,31,32, 34,39,84 87, 90 and 92).It is worth noting that the

complainants have paid the said amount without any delay on their part as per the demands of the opposite party. But, the opposite party had suddenly stopped the construction of project completely after October 2009 and did not communicate any reasons to the complainant as to why the construction of the project was stopped by them. The complainants repeatedly contacted the opposite party regarding the status of construction and handing over the possession of the flat but the opposite party avoided the complainants and did not give satisfactory response to them. It is note-worthy that in September 2010, the complainant requested the opposite party to refund their amount with interest but opposite party clearly refused to refund the amount and proposed to offer an alternative unit in other tower of its project. Since, the complainants have already paid substantial amount to the opposite party, they had no other option but to accept the offer of the opposite party and were compelled to take alternative unit in the other Tower of the opposite party.

21. It is also worth noting that the complainants had accepted the proposal of opposite party regarding allotment of other unit subject to the conditions that original agreement would remain in force and opposite party would adjust delayed compensation in the balance payment. After many telephonic conversation, the opposite party allotted other unit F-407 and another agreement was executed between the complainant and the opposite party on 31.07.2015.

22. It is also worth noting that possession of flat was offered by the opposite party only on 22.03.2016. It is further worth noting that after the offer of the possession the complainants visited the site and found that the flat was not in a habitual condition. The complainants have also enclosed the photographs in respect of the condition of the flat.

23. In these circumstances, we are of the considered view that the opposite party was deficient in service and cannot compel the complainants to take possession of the flat at this belated stage by stating that Occupancy Certificate has already been obtained and hundred number of persons are already residing in its project.

24. Moreover, till date the opposite party has not been able to place on record the Occupancy Certificate in respect of its project.

25. Consequently, the complaint filed by the complainants is allowed.

The opposite party is directed to refund to the complainants a sum of **Rs. 23,06,885/-** 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 no. 1 till **14.06.2024** (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 no. 1 pays the entire amount on or before **13.08.2024**.

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 **13.08.2024**, 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 no. I till the actual realization of the amount.

26. 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 costs for mental agony and harassment to the complainant; and

**B.** The litigation costs to the extent of Rs. 50,000/-.

27. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

28. 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.

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

(PINKI)  
Member (Judicial)

(BIMLA KUMARI)  
Member (Female)

**PRONOUNCED ON 14.06.2024.**