

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION****Date of Institution : 19.09.2019****Date of Reserving the order: 22.04.2025****Date of Decision: 19.06.2025****CC No. 897/2019****IN THE MATTER OF****Sh. Akshat Bansal**

S/o Sh. Ashok Kumar Bansal

R/o J-59, Ashok Vihar,

Phase-I, Delhi-110052

**(Through: Mr. Kapil Jain, Advocate)  
.....Complainant****VERSUS****M/s DLF Gayatri Developers**

(A unit of DLF Universal Ltd.)

Through its DirectorsOffice at:

DLF Centre, Ground Floor,

Sansad Marg, New Delhi-110001

**(Through: Mr. Kalyan Kumar Thevar, Advocate)  
.....Opposite Party****CORAM:****HON'BLE MS. BIMLA KUMARI, PRESIDING MEMBER**

Present: Mr. Kapil Jain, counsel for the Complainant  
Mr. Pravin Bahadur, counsel for the Opposite Party.

**PER: HON'BLE MS. BIMLA KUMARI, PRESIDING MEMBER**

### **JUDGMENT**

1. Brief facts of the case are that the Complainant vide 'Application for Allotment' dated 19.10.2012 had applied for allotment of a residential plot measuring 356 sq. yards in the project of the Opposite Party, namely, **"Garden City"** at Nandigama Village, Kothur Mandal, Mahboobnagar District, Andhra Pradesh and paid a sum of Rs.1,20,000/- to the Opposite Party vide cheque bearing no. 443461 dated 20.10.2012 drawn on Syndicate Bank, Naya Bazar, Delhi, towards the booking amount.

2. It is the case of Complainant that on 08.12.2012, the booking of plot was confirmed by the Opposite Party and the total value of plot was Rs.20,00,167/-. At the time of booking, the Opposite Party represented that all necessary sanctions and approvals had been obtained and also assured that the possession would be given within 24 months from the date of booking. Till 12.04.2014, he had paid a total sum of Rs.14,66,304/- to the Opposite Party as per the Construction Linked Payment Plan. When he personally visited the project site in Hyderabad, he came to know that no development work was carried out at the project site and therefore, he stopped making further installments. After passing of seven years, no proper development has been carried out at the site by the Opposite Party. On numerous occasions, he requested the Opposite Party to provide the details of development work carried out at the site. However, the Opposite Party kept going on raising demands for club house membership fees and common area maintenance charges, etc. The Opposite Party mentioned different possession dates in different Allotment Letters executed with the home buyers.

3. It is the further case of Complainant that since there were serious quality issues with respect to the

development work carried out by the Opposite Party, he sent an e-mail dated 15.12.2017 to the Opposite Party and brought the said issues into the notice of Opposite Party. But, the Opposite Party instead of rectifying these issues gave false and frivolous reply through e-mail dated 18.12.2017, which clearly showed that the Opposite Party had willfully and deliberately played fraud upon the home buyers by making false and misleading representation and induced the Complainant to make the payment with hefty interest without obtaining the approvals and sanctions from the concerned authorities. The Allotment Letter issued by the Opposite Party was unilateral, one-sided, biased unfair, non-reciprocal, exploitative and was got signed by the Opposite Party by exercising undue influence and abusing its dominant position. There is fundamental breach of contract on the part of Opposite Party by delaying the project inordinately and unjustifiably.

4. It is the further case of Complainant that the Opposite Party kept on threatening to cancel the allotment and to allot the plot to some other person and to forfeit the entire amount paid by Complainant. The Opposite Party has neither completed the construction/development of the plots nor refunded the amount with interest and is also not providing any compensation for the inordinate delay in giving possession. The other home buyers in the same project of Opposite Party have been granted compensation by the orders of Hon'ble National Commission, where they had filed the complaint jointly. But, the Opposite Party denied the legitimate compensation to the Complainant. Aggrieved by aforesaid conduct of the Opposite Party, the Complainant issued legal notice dated 09.07.2019 upon the Opposite Party and sought refund of his amount of Rs.14,66,304/- along with interest @ 24% p.a. as well as costs of

Rs.22,000/- for legal notice. But, the Opposite Party did not comply with the notice.

5. Thus, the Complainant was left with no other option but to file the complaint against the Opposite Party and has prayed for directions to the Opposite Party to refund the amount of Rs.14,66,304/- along with interest @ 24% p.a. from the date of payment till realization and a sum of Rs.10,00,000/- for compensation for mental agony and sum of Rs.1,00,000/- towards litigation costs.

6. After the complaint was filed before this Commission, notice of the complaint was issued to the Opposite Party on 08.01.2020.

7. Upon service, the Opposite Party filed the written statement, wherein it is submitted that the Complainant is not a consumer as he has invested in the project to make profits out of real estate. The Complainant is resident of J-59, Ashok Vihar, Phase-I, Delhi and has not explained as to why he has purchased another residential property in Hyderabad. Further, the property in dispute was located in Hyderabad and, thus, the Commission does not have territorial jurisdiction to entertain the complaint. As per clause 11(a) of Allotment Letter, the Opposite Party had agreed to offer the possession of plot within 24 months from the date of application of allotment. But, the Opposite Party cannot be made liable for the delay or failure to hand over the possession of plot within prescribed time, due to force majeure circumstances. The delay in developing the project was due to separate Telangana Movement in United Andhra Pradesh and delay in obtaining certain statutory approvals from authorities. As per clause 31 of Allotment Letter, if the delay is due to force majeure conditions then the Opposite Party will not be liable for not performing the undertaking provided in Allotment Letter.

There is no deficiency in service on the part of Opposite Party as the Complainant has already offered the possession vide letter dated 02.05.2019 with request to Complainant to make the balance payment as per the final statement of account dated 27.04.2019, but the Complainant failed to make the payment. Since there exists an Arbitration clause 30 in Allotment Letter, the matter should be referred to Arbitrator. As per clause 8 of Allotment Letter, the booking amount paid by the allottee shall be constituted as earnest money. Further, as per clause 19 of Allotment Letter, if the Complainant fails to comply with payment plan and other terms and conditions, then the Opposite Party shall forfeit the earnest money. Vide e-mail dated 20.10.2016, the Opposite Party informed the Complainant that it had applied for completion certificate of Phase-2. The offer of possession was issued to the Complainant on 02.05.2019. The final statement of account dated 27.04.2019 was also sent to the Complainant with request to make the payment. The Complainant has deliberately not signed the Allotment Letter sent to him. The Complainant has paid an amount of Rs.15,19,467.55 to the Opposite Party, and, thereafter, defaulted in paying installments which were demanded on 08.09.2013, 08.12.2013, 08.03.2014, 08.06.2014, 08.09.2014 and 15.06.2019. Thus, the Opposite Party has prayed for the dismissal of complaint.

8. The Complainant filed rejoinder to the written statement of Opposite Party, wherein he denied the allegations of Opposite Party and re-capitulated the facts, narrated by him in his complaint.
9. The Complainant has filed evidence by way of his affidavit.

10. The Opposite Party has also filed evidence by way of affidavit of Mr. Suresh Krishna, the Authorized Representative of Opposite Party.

11. The Complainant as well as the Opposite Party filed their respective written arguments.

12. I have heard arguments from Ld counsel for Complainant and Opposite Party.

13. I have also gone through the material on record.

14. First, of all, I would like to deal with the preliminary objections taken by the Opposite Party.

**“Whether the Complaint is ‘Consumer’ or not.”**

15. It is the case of Opposite Party that Complainant is resident of J-59, Ashok Vihar, Phase-I, Delhi and he has invested in the real estate only to earn profit, which amounts to commercial purpose and, thus, the Complainant is not a ‘Consumer.’

16. To resolve this issue, I would like to refer to Section 2 (1) (d) of Consumer Protection Act, 1986:

*“Section 2(1)(d) Consumer” means any person who-*

- i. buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or*
- ii. hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other*

*than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [but does not include a person who avails of such services for any commercial purpose]*

*Explanation – For the purpose of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;”*

17. Further, I would also like to refer to the judgment of **Aashish Oberai Vs Emaar MGF Land Limited** reported in **I (2017) CPJ 17(NC)**, wherein it has been 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.”*

18. Further, I would also like to refer to the judgment 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 it has been 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."*

19. From the aforesaid dicta of the Hon'ble National Commission, it flows that it is for the Opposite Party to prove that the said plot was purchased by the Complainant to earn profit, by way of some documentary proof and a mere bald statement is not sufficient to raise adverse inference against the Complainant.

20. Now, coming to the facts of present case, the Complainant has availed the services of Opposite Party by booking the residential plot in the project of Opposite Party. The Opposite Party has merely made a statement that the Complainant is not a Consumer. However, on perusal of the record, I fail to find any material which shows that the Complainant had booked the said plot for gaining profit and was engaged in the sale and purchase of plots on regular basis. Mere allegations, that the Complainant is not a Consumer, cannot be the ground to reject the present consumer complaint. Consequently, this objection raised on behalf of the Opposite Party is answered in negative.

**"Whether the Commission has no Territorial Jurisdiction."**

21. It is the case of Opposite Party that since the property in dispute was located at Hyderabad, this Commission does not have territorial jurisdiction to entertain the complaint.



22. To resolve this contention, I would like to refer **Section 17 (2) of the Consumer Protection Act, 1986** which is reproduced herein for ready reference:

*“A complainant 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.”*

23. Further, I would like to refer to judgment of **Rohit Srivastava Vs. Paramount Villas Ltd. 017 SCC OnLine NCDRC 1198**, wherein it was inter-alia 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."

24. Now, coming to the facts of the present case, it is to be noted that the Opposite Party is having its office at DLF Centre, Ground Floor, Sansad Marg, New Delhi-110001, as per memo of parties. Since, the Opposite Party is having its registered office at DLF Centre, Ground Floor, Sansad Marg, New Delhi-110001, I am of the considered view that this commission has the territorial jurisdiction to entertain the complaint. Hence, this contention of the Opposite Party is also answered in negative.

**"Effect of Arbitration Clause in the Agreement."**

25. It is the case of Opposite Party that since there exists an Arbitration clause 30 in Allotment Letter, the matter should be referred to Arbitrator.

26. To deal with this issue, I would like to refer to the judgment in **Emaar MGF Land Limited Vs. Aftab Singh** reported at **I (2019) CPJ 5 (SC)**, wherein the **Apex Court** has held as under:-

*"55. 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."*

27. The Hon'ble Apex Court has put to rest the controversy relating to the existence of arbitration clauses in the allotment letter/Buyers agreement etc. as is evident from the relevant paragraph 55 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, I am of the considered view that this Commission is authorized to adjudicate the case and the existence of an arbitration clause in the Allotment Letter does not affect the jurisdiction of this Commission to entertain and adjudicate this matter.

28. **The last question for consideration is whether there is deficiency of service on the part of Opposite Party.**

29. To resolve this issue, I would like to refer the Judgment in **Arifur Rahman Khan and Ors. vs. DLF Southern Homes Pvt. Ltd. and Ors.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) (0) 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 fulfillment of a contractual obligation.*"

30. Returning to the facts of present case, it is significant to note that as per 'Application for Allotment' dated 19.10.2012 **(Page 17 to 33 of complaint)** the Complainant had applied for allotment of residential plot in the project of the Opposite Party, namely, **"Garden City Hyderabad"** at Nandigama Village, Kothur Mandal, Mahboobnagar District, Andhra Pradesh. The Complainant paid an amount of Rs.1,20,000/- to the Opposite Party towards advance booking is evident from cheque no. 443462 dated 20.10.2012 drawn on Syndicate Bank **(Page 35 of complaint)**. Thereafter, the Opposite Party issued Allotment Letter dated 08.12.2012 **(Page 37 to 55 of complaint)** to the Complainant, vide which the Opposite Party allotted the plot bearing no. 956 admeasuring 356 sq. yards, total sale price of Rs.19,55,573/- to the Complainant.

31. The Complainant has categorically deposed that at the time of booking, the Opposite Party assured him that the offer of possession of plot would be given within 24 months from the date of initial booking, which was further affirmed by the schedule mentioned in the 'Construction Linked Payment Plan.' He has further deposed that he had made timely

payment till 12.04.2014 and paid a total sum of Rs.14,66,304/- to the Opposite Party as per the 'Construction Linked Payment Plan.' But, when he personally visited the project site in Hyderabad, he came to know that no development work was carried out at the project site and he stopped making payment of installments. On numerous occasions, he requested the Opposite Party to provide the details of development work being carried out at the site, but of no avail. But, the Opposite Party kept going on raising demands for Club House membership fees and common area maintenance charges although the construction of Club House has not even started and the society is not inhabitable with no project construction/development activity carried out at the site. He has further deposed that even after passing of seven years, no proper construction/development activity has been carried out at the site. He has not been informed by the Opposite Party about the fate of project. Since, there were many discrepancies in the development work, he wrote an e-mail dated 15.12.2017 to Opposite Party and brought the issues to the notice of Opposite Party. But, instead of rectifying the discrepancies, the Opposite Party gave false and frivolous reply through e-mail dated 18.12.2017, which clearly shows that the Opposite Party willfully and deliberately played fraud and made false representations and induced the Complainant to make the payment. Further, the Opposite Party sold the plots without obtaining the approvals from concerned authorities and induced the Complainant and other home buyers to sign unilateral, one-sided, biased, unfair and exploitative Plot Allotment letter by abusing its dominant position.

32. He has further deposed that the Opposite Party kept on threatening to cancel the allotment and forfeit the entire amount paid by him, despite receipt of hefty amount. The Opposite Party has neither completed the development of the plots

nor refunded the paid amount with interest and also not paying any compensation for the inordinate delay in giving possession. He has further deposed that the other home buyers, namely, Subani Bhasha Nure has been granted compensation of Rs.8,49,774/- for delay caused to project, but he was denied the legitimate compensation without any reason. Thereafter, he issued legal notice dated 09.07.2019 to the Opposite Party and sought refund of his entire money along with interest and compensation. But, the Opposite Party did not comply with the notice.

33. It is worth noting that as per clause 11(a) of Allotment Letter dated 08.12.2012, the Opposite Party had agreed to hand over the possession of plot within 24 months from date of Application for Allotment i.e. by 19.10.2014. It is further worth noting that the Opposite Party admitted (in para 45 of written statement) that it has received an amount of Rs.15,19,467.55 from Complainant till September 2013, which thereby shows that the Complainant has paid approx 75% of the total consideration amount of plot to the Opposite Party within 11 months of booking.

34. On the other hand, it is the case of Opposite Party that vide e-mail dated 20.10.2016, it had informed the Complainant that it had applied for completion certificate for Phase-2. It is worth noting that the offer of possession of plot was issued to the Complainant by the Opposite Party only on 02.05.2019 (**Page 97 to 99 of list of documents**). It is the case of Opposite Party that delay in developing the project was due to separate Telangana Movement in United Andhra Pradesh and contractor failed to provide labour, which were beyond the control of Opposite Party and therefore, was not able to hand over the possession of plot within prescribed time due to force majeure circumstances.

35. It is worth mentioning that the Opposite Party has not placed on record any material in this regard. Thus, I am of the considered view that the Opposite Party is wholly and solely responsible for not completing the project in time as it was the duty of the Opposite Party to arrange the labour and other things for the development of plots.

36. **In these circumstances, I am of the considered view that there is deficiency in service on behalf of Opposite Party, which has no right to use or sit over the Complainant's hard-earned money.**

37. Accordingly, the complaint filed by Complainant is allowed.

38. Consequently, I direct the Opposite Party to refund the amount of **Rs.15,19,467.55** to the Complainant with the following arrangement:

- A. An interest @ **6% p.a.** calculated from the date on which the each installment/payment was received by the Opposite Party till **19.06.2025** (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 **19.08.2025**.
- 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 **19.08.2025**, the entire amount is to be refunded along with an interest @ **9% p.a.** calculated from the date on which the each installment/payment was received by the Opposite Party till the actual realization of the amount.

39. In addition to the aforesaid and taking into consideration the facts of the present case, the Opposite Party is directed to further 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/-.**

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

41. 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.

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

(BIMLA KUMARI)  
Presiding Member

**PRONOUNCED ON 19.06.2025**