

IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION

Date of Institution: 19.07.2016

Date of Hearing: 06.03.2025

Date of Decision: 02.07.2025

COMPLAINT NO. 782/2016

IN THE MATTER OF

1. MR. NITIN BANSAL,
S/O. LATE MR. G.C. BANSAL.
2. MRS. AMITA BANSAL,
W/O. MR. NITIN BANSAL,
BOTH PERMANENT R/O. HOUSE NO. 8 F,
MODEL TOWN,
PATIALA (PUNJAB),
AT PRESENT RESIDING AT HOWRAH,
WEST BENGAL.

(Through: Mr. Tushant Deep Garg, Advocate)

...Complainants

VERSUS

M/S. PARSVNATH DEVELOPERS LTD.,
THROUGH ITS MANAGING DIRECTOR,
6TH FLOOR, ARUNACHAL BUILDING,
19, BARAKHAMBA ROAD,
NEW DELHI.

(Through: Mr. T.P. Chauhan and Ms. Tanvi Garg, Advocates)

...Opposite Party

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

Present: Mr. Tushant Deep Garg, Counsel for the Complainants, E-mail: lawyer.tushant@gmail.com.

Mr. T.P. Chauhan and Ms. Tanvi Garg, Counsel for the Opposite Party, E-mail: tgarg@knm.in.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT**JUDGMENT**

1. The present Complaint has been filed by the Complainants before this Commission under Section 17 of the Consumer Protection Act, 1986 alleging deficiency in service on the part of the Opposite Party and have prayed for the following reliefs:

- i) *To direct the opposite party to hand over the actual legal physical possession of the agreed flat complete in all respects as stated in buyer flat agreement, to the satisfaction of the complainants.*
- ii) *To provide the drawings/ plan lay-outs showing the original area of the flat i.e 1570 sq. ft. and also drawings of the increased area of 120 sq. ft as claimed by OPs*
- iii) *To charge for the super area as will be calculated by the Architect (Local commissioner) and refund the balance (if any) being over charged from the complainants on account of the difference between the actual area and the claimed/stated area.*
- iv) *To refund the sum of Rs. 50,000/- wrongly charged on account of car parking facilities along with interest @ 12% P.A from the date of deposit till its realization.*
- v) *To pay appropriate delay compensation to be determined by this Hon'ble Court taking into account the delay of six years in handing over the possession by the OPs also Considering the fact that in case of delay in payment by*

the buyer, as per clause 5 (b) of the agreement, the developer is entitled to claim penal interest from buyer @ 24% per annum, on the other hand, if there is delay by the developer in handing over possession meager compensation @ Rs. 5 per sq. feet of the super area per month for the period of delay is provided in the agreement, in the light of decision dated 20.01.2016 rendered by Hon'ble N.C.D.R.C in the judgement Nalin Bhargava and Anr. Versus Parsavnath Developers Ltd. and Anr.

- vi) To pay interest @ 12% per annum on the consideration amount paid by the complainants from 01.04.2010 i.e. from the period beyond the due time for delivering possession till the actual date of possession.*
- vii) To pay a sum of Rs. 20 lacs as compensation for deficient in providing services as mentioned in Para 16 above and mental agony and harassment.*
- viii) Costs of litigation of the present complaint @ Rs. 100000/-*
- ix) Any other relief which this Hon'ble Commission deems fit and appropriate in facts and circumstances of the present case.*

2. Brief facts necessary for the adjudication of the present Complaint are that Complainants booked a 3-bedroom residential Flat bearing no. T2-302, on third floor in tower T2, having a super built-up area of approximately 1570 sq. ft. for the total sale consideration of Rs. 27,68,150/- (Rupees Twenty-Seven Lakh Sixty-Eight Thousand One-Hundred and Fifty Only), and opted for a construction linked payment plan. The Flat Buyer Agreement was executed between the Complainants and the Opposite Party on 19.04.2007, with a clear understanding with regard to timely construction of the said Flat within 30 months alongwith a grade period of 6 months from the date of commencement of construction.
3. The Complainants till date have made a total payment amounting to Rs.26,93,205.50/- (Rupees Twenty-Six Lakh Ninety-Three Thousand Two-Hundred and Five and Fifty Paise Only) towards the sale consideration of the Flat. Despite the payment of a significant sum, the Opposite Party has not handed

over the possession of the Flat in question to the Complainants till date. The Opposite Party further made demands for various other costs towards an increase of 120 sq. ft. area, VAT, parking charges etc., which were made by the Complainants. Moreover, the registration charges and the stamp charges can only be calculated if the exact covered area of the flat is known to the Complainants, and the Opposite Party has failed to provide the required information to the Complainants on the same. Aggrieved by the aforesaid, the Complainants have approached this Commission.

4. The Opposite Party has filed its Written Statement, denying all the contentions and allegations of the Complainants. The Opposite Party has contended that this Commission does not have territorial jurisdiction to adjudicate the present Complaint under Section 17 of the Consumer Protection Act, 1986. Additionally, the Opposite Party has submitted that the present Complaint involves complicated questions of law, which should be decided by an appropriate court of law, and is not maintainable before this Commission. The Opposite Party has also submitted that the Complainants are not the original allottees of the Flat in question and the said Flat has been purchased from one Mr. Madhur Malik and not the Opposite Party directly. The Opposite Party has submitted that the pace of the construction of the residential project had been slowed down due to global recession, causing a delay in the execution of the said project. It is submitted that the offer of possession from the Opposite Party was only a conditional offer of possession for the incomplete Flat in question and was not bonafide in nature. Further, the Opposite Party has submitted that there has been no intentional default on part of the Opposite Party for the delay in the project. Pressing the aforesaid contentions and submissions, the counsel for the Opposite Party has prayed for the dismissal of the present Complaint.
5. The Complainants have filed their Rejoinder rebutting the Written Statement filed by the Opposite Party, wherein, the Complainants have submitted that the

Complainants raised a loan from HDFC Bank in 2008 for the Flat in question, and that the loan Agreement at the time was a Tripartite Agreement, however, the loan amount has been repaid by the Complainants to the concerned financial institution, after which an NOC was issued by the HDFC Bank in favour of the Complainants. Thereafter, both parties filed their Evidence by way of Affidavit to prove their averments on record.

6. Written Arguments have been filed by the Complainants, wherein the contents of the Complaint have been reiterated. The Complainants have relied on the following judgments in support of their case:

- i) *Consumer Case No. 1467 of 2015* titled “*Ansal API Megapolis Buyer’s Association (Regd.) and Ors. vs. Ansal Hi-Tech Townships Ltd.*” decided on *08.11.2021*
- ii) *Consumer Case Nos. 3879 and 3880 of 2017* titled “*Deepak Agarwal and Ors. vs. Three C Shelters Pvt. Ltd. and Ors.*” decided on *21.01.2020*

7. Despite multiple reminders and opportunities, the Opposite Party has failed to file the Written Arguments.
8. We have perused the material available on record and heard the counsel appearing on behalf of the parties.
9. The fact that the Complainants had booked a Flat with the Opposite Party for a total consideration of Rs. 27,68,150/- (Rupees Twenty-Seven Lakh Sixty-Eight Thousand One-Hundred and Fifty Only) is evident from the Flat Buyer Agreement dated 19.04.2007 (annexed as *Annexure P-3 on page nos. 24-35 alongwith the Complaint*). Further, the payment to the extent of Rs.26,93,205.50/- (Rupees Twenty-Six Lakh Ninety-Three Thousand Two-Hundred and Five and Fifty Paise Only) has been paid by the Complainants towards the total consideration amount, which is evident from the Final Statement of Account (annexed as *Annexure P-7 on page no. 49 alongwith the Complaint*).
10. The *first preliminary question* before us is *whether the present Complaint falls*

under the territorial jurisdiction of this Commission.

11.To resolve this issue, we deem it appropriate to refer to Section 17(2) of the Consumer Protection Act, 1986 which provides as under:

“17. Jurisdiction of State Commission.- (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.”

12. Analysis of Section 17(2) of the Consumer Protection Act, 1986 leads us to the conclusion that the extent of territorial jurisdiction of the State Commission is to entertain cases where the Opposite Party or any of the Opposite Parties at the time of the institution of the Complaint, actually and voluntarily reside or carry on business or have a branch office or personally work for gain or where the cause of action arose.

13. Having discussed the statutory position, the facts of the present case reflect that the address of the branch office of the Opposite Party is at **6th Floor, Arunachal Building, 19, Barakhamba Road, New Delhi**. Since the aforesaid address of the Opposite Party falls within the territory of Delhi, this Commission has the

territorial jurisdiction to adjudicate the present Complaint.

14. Further, to strengthen the aforesaid findings, we tend to rely on ***Rohit Srivastava vs. Paramount Villas Pvt. Ltd.*** as reported in ***2017 SCC OnLine NCDRC 1198***, wherein it has been held as under:

“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.”

15. Relying on the above settled law, we are of the view that this Commission has the territorial jurisdiction to adjudicate the present Complaint.
16. The ***second preliminary question*** for consideration before us is ***whether the present Complaint is not maintainable before this Commission on the ground that the present dispute involves complicated questions of facts and law, which should be decided by a Civil Court.***
17. The Opposite Party has contended that the jurisdiction of this Commission would be barred since the present Complaint involves complicated questions of facts and law, which can only be decided by a Civil Court and not by the summary procedure of this Commission.
18. The Consumer Protection Act, 1986, came into being in order to protect the interests of Consumers who are affected by the acts of the service providers, who in order to attract the Consumers, tend to make lucrative offers but when it comes to actually providing the offered services, the service providers take a step back.

19. Returning to the facts of the present Complaint, perusal of the record shows that the Complainants availed the services of the Opposite Party for a consideration. However, the Opposite Party failed to handover the possession of the said Flat, aggrieved by which, the Complainants have sought possession of the same. Hence, the Complainants are entitled to file the present Complaint before this Commission since the Complainants are aggrieved by the deficient services of the Opposite Party i.e., the failure of the Opposite Party to handover the possession of the said Flat and it is only due to this reason, the possession is sought from the Opposite Party, which this Commission is authorised to adjudicate. Therefore, the question raised by the Opposite Party holds no merit.
20. The *main question* for consideration before us is *whether the Opposite Party is deficient in providing its services to the Complainants*.
21. To deal with this issue, we deem it appropriate to refer to the judgement of the *Hon'ble Apex Court in Arifur Rahman Khan and Ors. vs. DLF Southern Homes Pvt. Ltd. and Ors.* as reported in *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.”

22. The above dicta reflects that “deficiency” is a dereliction with respect to any fault, imperfection, shortcoming or inadequacy in performance required by law in pursuance of a contract of service on the part of the service provider amounts to deficiency in service.

23. To deal with this issue, we deem it necessary to refer to Clause 10(a) of the Flat Buyer Agreement dated 19.04.2007, regarding the construction of the Flat, which is reproduced hereunder for ready reference:

"10 (a) Construction of the Flat is likely to be completed within a period of thirty (30) months of commencement of construction of the particular Tower in which the Flat is located, with a grace period of six (6) months, on receipt of sanction of building plans/revised building plans and approvals of all concerned authorities including the Fire Service Deptt., Civil Aviation Deptt., Traffic Deptt., Pollution

Control Deptt., as may be required for commencing and carrying on construction subject to force majeure, restraints or restrictions from any courts/authorities, non-availability of building materials, disputes with contractors/work force etc. and circumstances beyond the control of the Developer and subject to timely payments by the Flat Buyers. No claim by way of damages/compensation shall lie against the Developer in case of delay in handing over possession on account of the said reasons. The date of submitting application to the concerned authorities for issue of completion/part completion/occupancy/part occupancy certificate of the Complex shall be treated as the date of completion of the Flat for the purpose of this clause/agreement."

24. From the bare perusal of the aforesaid Clause, it is clear that the Opposite Party was required to hand over the possession after the completion of construction of the said Flat within 30 months from the date of commencement of construction alongwith a grace period of 6 months.
25. On further perusal, we find that the Opposite Party failed to hand over the possession of the said Flat to the Complainants till date and within the stipulated time period (i.e. 30 months alongwith a grace period of 6 months) even when the Complainants had deposited a total amount of Rs. 26,93,205.5/- (Rupees Twenty-Six Lakhs Ninety-Three Thousand Two-Hundred and Five and Five Paise Only) by 10.06.2015, as is evident from the Final Statement of Account dated 11.06.2015 (annexed as *Annexure P-7 on page no. 49 alongwith the Complaint*).
26. Further, the present Complaint was dismissed in default for non-prosecution vide order dated **04.04.2022** as the Complainants had failed to appear on 09.10.2019, 18.12.2019, 03.03.2021, 23.09.2021 and on 04.04.2022. Thereafter, the Complainants filed First Appeal No. 301 of 2022 against the order dated 04.04.2022 in Complaint Case No. 782 of 2016 at the Hon'ble National

Commission, and the same was allowed on 28.08.2024 setting aside order dated 04.04.2022, wherein, the Hon'ble National Commission directed as follows:

“12. Having considered the explanation given with regard to non-appearance of the Counsel we are satisfied that the Appeal deserves to be allowed and the Complaint requires consideration on merits. The explanation given with regard to the non-appearance of the Counsel as pointed out hereinabove demonstrates that the case was being fixed during the Covid period and it is only on the date fixed for completion of pleadings and final arguments that the case was dismissed in default. Since the explanation given in the grounds of Appeal are satisfactory enough, we allow the Appeal and set aside the order dated 04.04.2022 and remand the matter back to the State Commission for a decision afresh on merits.

13. We may put on record that the pleadings have been exchanged between the parties and therefore the Appellants and the Respondents shall file their written arguments within four weeks from today. Parties shall appear before the State Commission on 17.09.2024 and the Commission shall proceed thereafter to fix a date as per its convenience and dispose of the complaint as expeditiously as possible preferably not later than six months from today as the original Complaint is of the year 2016.

14. While disposing of this Appeal we further note the mail dated 13.04.2024 sent by the Respondent to the Appellant where the following three offers were made:-

"1. We are ready to hand over the possession of the said flat on as is where is basis and the company has agreed to give a lump sum amount of Rs. 4.00.000/- after adjustment of all the dues and rebate on account of delayed compensation, waiver of increased area, cost on account of unfinished work etc.

2. stamp duty and registration charges shall be paid by you.

3. Maintenance charges as a payable to the RWA shall be settled by your client.

Please note that the abovementioned proposal is without prejudice to the rights of the company in the said matter."

15. This mail has already been filed along with the affidavit quoted hereinabove. The Respondent has therefore also agreed to give a lump sum amount of Rs.4 lakhs after adjustment of all the dues and has also offered to hand over possession. The Appeal is therefore allowed subject to a further condition that the Respondent shall deposit a sum of Rs.4 lakhs as offered by it, before the State Commission, that shall remain in deposit till the final disposal by the State Commission and subject to any further orders passed therein as directed above.

16. The appeal is accordingly allowed with the aforesaid directions."

27. On perusal of the aforementioned Order of the Hon'ble National Commission, it is clear that the Opposite Party has agreed that it would pay Rs. 4,00,000/- (Rupees Four Lakh Only) to the Complainants towards delay compensation, waiver of increased area and cost on account of unfinished work.

28. Additionally, the Opposite Party has paid an amount of Rs. 4,43,525/- (Rupees Four Lakh Forty-Three Thousand Five-Hundred and Twenty-Five Only) towards delay compensation for the period of April, 2010 to 15.10.2024 to the Complainants, which is evident from the Final Statement of Account (annexed as ***Annexure P-4 on page no. 38 alongwith the Complaint***).

29. Further perusal of record shows that the Opposite Party has not complied with the aforesaid order of the Hon'ble National Commission dated 28.08.2024 till date.

30. Be that as it may, it is clear that before the Hon'ble National Commission, the Opposite Party has agreed to hand over the possession of the Flat in question with a further direction to pay Rs. 4,00,000/- (Rupees Four Lakh Only) as a lumpsum amount.
31. Keeping in view the facts of the present case and the extensive law as discussed above, we direct the Opposite Party to hand over the possession of the Flat in question to the Complainants and pay the entire amount of **Rs. 4,00,000/-** (Rupees Four Lakh Only), as per the order of the Hon'ble National Commission dated 28.08.2024 till **02.07.2025** (being one month from the date of the present Judgment).
32. Being guided by the principles as discussed above, in case the Opposite Party fails to hand over the possession and refund the amount as per the aforesaid para 30 on or before **02.08.2025**, the entire amount is to be refunded along with an interest @ **9% p.a.** calculated from the **16.12.2014** (being the date from which delay compensation is due) till the actual realization of the amount.
33. 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/-** (Rupees One Lakh Only) as cost for mental agony and harassment to the Complainants;
 - B. The litigation cost to the extent of Rs. 50,000/-** (Rupees Fifty Thousand Only).
34. Application(s) pending, if any, stands disposed of in terms of the aforesaid judgment.
35. 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.

(JUSTICE SANGITA DHINGRA SEHGAL)

PRESIDENT

(PINKI)

MEMBER (JUDICIAL)

Pronounced On: **02.07.2025**

LR-DK