

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

Date of Institution: 06.12.2021

Date of Hearing: 03.07.2025

Date of Decision: 23.07.2025

CONSUMER COMPLAINT NO. 205/2021

IN THE MATTER OF:

- 1. MS. SHIVANGI SURI,**
D/O MR. RAJAN SURI,
- 2. MR. KARAN SURI**
S/O MR. RAJAN SURI,

BOTH RESIDING AT:

R/O T-11/6, DLF PHASE-III,
GURGAON – 122002.

(Through: PSP Legal, Advocates and Solicitors)

...Complainants

VERSUS

**CAPITAL HEIGHTS PRIVATE LIMITED,
THROUGH ITS DIRECTOR,
AT: N-8, GROUND FLOOR,
PANCHSHEEL PARK,
NEW DELHI – 110017.**

(Through: T & T Law)

...Opposite Party

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

Present: None for the Complainant.
Mr. Deepak Sharma, Mr. Sudhanshu Ghai and Mr. Zorawar Singh, counsel for the OP.

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

1. The present complaint has been filed by the Complainants alleging deficiency in service and unfair trade practices by the Opposite Party and have prayed the following reliefs:

- a. Direct the Opposite Party for an immediate 100% refund of the total amount paid by the Complainants) along with a penal interest @ 18% per annum from the date of receipt each payment made;*
- b. Direct the Opposite Party to pay compensation of Rs. 5,00,000/- (Rupees Five Lakhs Only) to the Complainant(s) for the mental agony, harassment, discomfort and undue hardships caused to the Complainants) as a result of the above acts and omissions on the part of the Opposite Party;*
- c. Direct the Opposite Party to pay a sum of Rs. 1,00,000/- (Rupees One Lakhs Only) to the Complainants) towards litigation costs; and*
- d. Any other and further relief in favour of the Complainant(s) as the Hon'ble Commission may deem fit and proper in the fact and circumstances of the case.*

2. Brief facts necessary for the adjudication of the present complaint are that the Complainants vide application form for provisional allotment of residential units dated 28.08.2014, booked a unit with the Opposite Party in the project "*Capital Heights Private Limited*" situated at Gurugram, Haryana, by paying a booking amount of Rs. 10,00,000/-. Subsequently, the Opposite Party issued an allotment letter dated 15.09.2014, whereby the Complainants were allotted Unit No. CR-02/11 01 on the 11th floor in Tower CR-02. Thereafter, a Flat Buyer Agreement dated 30.10.2014 was executed between the parties. As per Clauses 6(a) and 6(b) of the said Agreement, the Opposite Party was to offer possession of the said unit within 30 months from the date of commencement of construction of the project, along with a grace period of 360 days. However, the Opposite Party, within one month of executing the said Agreement, also executed an Addendum to the Flat Buyer Agreement on 10.12.2014, whereby Clauses 6(a) and 6(b) were amended. As per the amended clauses, the possession of the unit was to be offered within 42 months plus a grace period of 180 days from the date of commencement of the project. The Complainants could not raise any objection to the said amendment as the Opposite Party had already collected a substantial amount of Rs. 48,24,704/- towards the said unit. Further, the Opposite Party vide letter dated 01.09.2014 informed the Complainants that the raft of Tower CR-02 was being cast. Therefore, the Opposite Party was expected to hand over possession of the said unit by 28.08.2018.
3. Further, the Complainants opted for the construction-linked payment plan and made timely payments amounting to Rs. 1,02,99,704/- as and when demanded by the Opposite Party. However, the Opposite Party has failed to hand over possession of the said unit till date. The Complainants also made several communications regarding the possession of the said unit but no response was received from the Opposite Party. Also, the Opposite Party failed to provide any definite information regarding the delivery of the unit,

even after the lapse of seven years from the date of booking. Hence, the Complainants have approached this Commission alleging deficiency in service on the part of the Opposite Party.

4. The Opposite Party has contested the present case and raised preliminary objections regarding the maintainability of the complaint. The counsel for the Opposite Party submitted that the interpretation and implementation of the terms of the Agreement dated 30.10.2014 are contractual in nature and therefore, cannot constitute either an unfair trade practice or deficiency in service. Thus, the dispute relating to contractual obligations can only be adjudicated by a Civil Court.
5. He further submitted that the Complainants are guilty of *suppression veri and suggestion falsi*, and has not approached this Commission with clean hands, as the Opposite Party has already completed the construction of the said unit and obtained the Occupation Certificate on 26.10.2021. Accordingly, the Opposite Party began offering possession of the unit in the said project. However, the Complainants have made payment of only Rs.1,02,99,704/- towards the total sale consideration of Rs. 1,47,99,984/-.
6. The counsel for the Opposite Party further submitted that the delay, if any, in handing over possession of the unit was due to force majeure circumstances, which were beyond its control and are duly covered under Clause 25 of the Agreement. He submitted that the construction activities of the said project were adversely affected by various regulatory and judicial orders, including the orders dated 08.11.2016 and 09.11.2017 passed by the Hon'ble National Green Tribunal, the order dated 14.06.2018 issued by the Haryana State Pollution Control Board, and the orders dated 10.11.2018, 24.12.2018, 01.11.2019, and 14.02.2020 passed by the Environment Pollution (Prevention & Control) Authority for NCR, whereby a complete ban was imposed on construction activities to curb

rising air pollution levels. Additionally, the movement of trucks carrying construction materials was also restricted under these directions.

7. The Opposite Party further relied on the order dated 04.11.2019 passed by the Hon'ble Supreme Court, whereby a blanket ban was imposed on construction and demolition activities. He further submitted that events such as demonetization and the outbreak of the COVID-19 pandemic also significantly contributed to the delay in completion of the project. Therefore, the Opposite Party is not liable for the non-performance of any obligations under the Agreement. Pressing the aforesaid objections, the counsel appearing on behalf of the Opposite Party prayed that the instant complaint be dismissed with costs.
8. The Complainants have filed the Rejoinder rebutting the written statement filed by the Opposite Party. Thereafter, both Complainants and Opposite Party has filed their Evidence by way of Affidavit in order to prove their averments on record.
9. The Complainants have filed written arguments and reiterated the allegations made in the present complaint. The Complainants relied upon the following judgments:
 - a. *Kolkata West International City Put Ltd. Vs. Devasis Rudra in Civil Appeal No. 3182 of 2019 (SLP (C)No (s). 1795 of 2017), [decided on 25.03.2019].*
 - b. *Experion Developers Pvt. Ltd. v/s Sushma Ashok Shiroor C.A. No. 6044 01 2019, decided on 07.07.20221.*
 - c. *Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan Civil Appeal No. 12238 of 2018, /decided on 02.04.2019].*

d. Geetu Gidwani Verma and Anr vs. Pioneer Urban Land and Infrastructure Ltd. CC No. 238 of 2017 [decided on 23.10.2018.

e. In Fortune Infrastructure & Anr v. Trevor D'Lima & Ors in Civil Appeal No(s). 3533-3534 of 2017.

f. Emmar MGF Land Ltd. & Ors. Vs. Amit Puri /(I 2015 CPJ 568 (NC).

10. On the other hand, the Opposite Party also filed written arguments, denying the allegation of the Complainant and reiterated the submission made in the written statement.
11. We have perused the material available on record and heard the counsel for the Opposite Party.
12. The fact that the Complainants had booked the said unit with the Opposite Party is evident from the Flat Buyer Agreement dated 10.12.2014 and Addendum to the Flat Buyer Agreement (*Annexure R-3 &4*). Payment to the extent **Rs. 1,02,99,704/-** by the Complainants to the Opposite Party is admitted in Para 18 of the written statement.
13. The first question to be adjudicated is *whether this Commission has the power to adjudicate the present matter or whether it should be decided by the Civil Court.*
14. The Opposite Party contended that the jurisdiction of this Commission is barred in view of the fact that the allegations contained in the present matter pertain to specific clauses of the agreement. Therefore, the issues raised are of a contractual nature, which can only be agitated before the Civil Court.
15. The Consumer Protection Act 2019 (amended) 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, they take a step back.

16. Deficiency has been defined under section 2 sub-clause (11) which reads as follows:

(11) "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 and includes—

(i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and

(ii) deliberate withholding of relevant information by such person to the consumer.

17. Returning to the facts of the present complaint, the perusal of the record shows that the Complainants avail the services of the Opposite Party for a consideration. However, the Opposite Party failed to complete the said project, aggrieved by which, the Complainants have sought the refund of the amount paid by him. Hence, the Complainants are entitled to file the present complaint before this commission as the Complainants are aggrieved by the deficient services of the Opposite Party i.e., the failure of the Opposite Party to handover the possession within reasonable time and it is only due to this reason, that the refund of the amount paid is sought from the Opposite Party, which this Commission is authorised to adjudicate.

18. Our view is further fortified by 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.

19. Consequently, we are of the view that the present complaint falls within the four corners of the jurisdiction of this commission and there is no bar with respect to the jurisdiction of this commission to entertain cases related to the refund of amount deposited with the Opposite Party.
20. The Opposite Party further contented *that the delay in handing over the possession of said unit was due to force majeure circumstances*, which were beyond the control of the Opposite Party as per clause 25 of the said agreement.
21. To deal this issue, we deem it appropriate to *Consumer Case no. 1624 of 2018* tilted as Sachin *Goel & Anr. V. M/S. Ansal Housing & Construction Limited* decided on 13.07.2022, wherein similar case Hon'ble NCDRC held:

“12. Admitted facts of the case are that complainants were to get possession of the apartment within 48 months with 6 months grace period. It is submitted that extraction of ground water was banned in Gurgaon by Punjab and Haryana High Court, therefore, construction was delayed. This cannot be a ground for Force Majeure because the opposite party could have used tankers and other sources to get water for the construction purpose and, therefore, this plea of Force Majeure is not a valid plea.

13. As regards ban on the mining of sand in Haryana and

Rajasthan is concerned, it is not such an act which was beyond the control of the opposite party or would have made it impossible for the opposite party to complete the construction because dust could have been obtained from other sources. It is also submitted that delay had occurred due to ban on the use of dust in 2015-2016 by the National Green Tribunal. It is expected from the opposite party that while making the promise regarding the date of possession, it should assess the anticipated date of possession after taking construction or the likely impediment in the construction. The opposite party certainly would have considered all these factors and that is why it gave time of 6 months of Force Majeure. It is also clear that no specific period during which the use of dust etc was banned by the National Green Tribunal has been mentioned by the opposite party. It is apparent that promised date of possession was 02.04.2017 and the present complaint was filed in the year 2018 and continued till 2022 and till date, there is no evidence that construction had been completed and the occupancy certificate has been obtained. Therefore, the ground that they could not complete the construction due to these reasons are meritless and baseless and has been taken with the intention to gain some advantage. It is a proved fact that opposite party had failed to give offer of possession of the subject apartment till date i.e. even after the expiry of five years.”

22. We also deem it appropriate to refer **Consumer Case No. 235 Of 2018** titled **Narinder Sachdeva & Anr. V. M/S. Ansal Housing & Construction Limited** decided on 06.01.2022, wherein NCDRC held:

“14. Learned Counsel appearing for the Opposite Party vehemently argued that the Clause specifies that the delivery of

possession is subject to force majeure conditions and that there were several reasons and circumstances beyond the control of the Opposite Party such as interim orders of the Hon'ble Punjab and Haryana High Court, whereby ground water extraction was banned in Gurgaon; orders passed by the National Green Tribunal (NGT), whereby mining of sand in Haryana and Rajasthan was banned; reservation agitation in Haryana; orders of NGT to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016, demonetization etc.

15. All the aforementioned reasons do not fall within the ambit of reasons beyond their control as it can be seen from the record that the Flat Buyer's Agreement was entered into way back in July, 2013 and the orders of NGT to prevent emission of dust in April, 2015 and in November, 2016 cannot be construed to be any substantial reason and definitely not a force majeure condition. Even demonetization and reservation agitation cannot be construed as force majeure. With respect to other reasons there is no documentary evidence on record that they have led to the delay in the delivery of possession.”

23. Above dicta reflect that the bans on groundwater extraction, sand mining, and the orders of the NGT, do not fall within the scope of circumstances beyond their control. Additionally, factors like demonetization and reservation agitation cannot be considered force majeure events. Furthermore, there is a lack of concrete documentary evidence to support the claim that these reasons have genuinely caused delays in delivering possession. Also, in the present case the Flat Buyer Agreement was executed way back in year 2014 and time period to offer the possession of the said unit was expired in year 2018. Therefore, the contention taken by the Opposite Party is devoid of any merits.
24. The ***main question*** for consideration before us is ***whether the Opposite Party is deficient in providing its services to the Complainants?***
25. 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 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.”

26. The above dicta reflects that failure on the part of the developer to deliver possession of the flat/unit to the purchaser within the contractually stipulated period constitutes a deficiency in service.
27. At this stage, it is appropriate to refer to Clause 6(a) of the Addendum to the Flat Buyers Agreement dated 10.12.2014 (*Annexure R-4*), which is reproduced as hereunder:

a)" ...The Company endeavors to offer the possession of the Unit in the Group Housing to the Allottee(s) within a period of 42 (forty two months from the date of commencement of construction of the Project hereof, i.e. the date on which the raft of the tower as intimated to the Allottee(s) must be casted (the "Commencement of Construction", and this date shall be duly communicated to the Allottee(s), subject to Force Majeure (defined hereinafter in Clause 25) or any other reason beyond the control of the Company, subject to the Allottee(s) having strictly complied with all the terms and conditions of this Agreement and not being in default under any provisions herein, and all amounts due and payable by the Allottee(s) under this Agreement having been paid in time to the Company...".

28. It reflects that the Opposite Party was bound to offer possession of the said unit within 42 months from the date of commencement of construction of the project i.e., the date on which the raft of the tower was cast, as intimated to the Allottee(s). Further, it is evident from the record that the Opposite Party issued a demand letter dated 01.09.2014 (*Annexure-C6*) for the casting of the raft of Tower No. C-2. Therefore, the stipulated period for offering possession of the said unit expired on 28.08.2018. As a result, the Opposite Party miserably failed to offer the possession of the

said unit within the stipulated period or during the grace period. Hence, the Opposite Party failed to fulfill its contractual obligation.

29. More so, it has been well settled that the Complainants cannot be expected to wait for an indefinite period to receive the benefits of the hard-earned money they have spent in order to purchase the property in question (*Ref: Fortune Infrastructure v. Trevor D'Lima reported at (2018) 5 SCC 442*).
30. The counsel for the Opposite Party submitted that the Opposite Party has completed the construction of the said unit and obtained the Occupation Certificate on 26.10.2021. He further submitted that the Opposite Party is ready to offer possession of the unit as soon as the Complainants pay the remaining balance amount.
31. Here, we deem it appropriate to refer to *Aashish Oberai vs. Emaar MGF Land Limited reported in I (2017) CPJ 17 (NC)*, wherein the Hon'ble National Commission has held as follow:

*"I am in agreement with the learned senior counsel for the Complainant that considering the default on the part of the Opposite Party in performing its contractual obligation, **the Complainant cannot be compelled to accept the offer of possession at this belated stage and therefore, is entitled to refund the entire amount paid by him along with reasonable compensation, in the form of interest.**"*

32. Relying on the above settled law, we hold that the Opposite Party is deficient in providing its services to the Complainants as the Opposite Party had given false assurance to the Complainants with respect to the time for handing over the possession of the said unit and kept the hard-earned money of the Complainants inordinate time. Therefore, now the Complainants are not bound to take the possession of the said unit after the stipulated period.

33. Keeping in view the facts of the present case and the extensive law as discussed above, we direct the Opposite Party to refund the entire amount paid by the Complainants i.e., **Rs. 1,02,99,704/-** along with interest as per the following arrangement:

- A.** An interest @ **6% p.a.** calculated from the date on which each installment/payment was received by the Opposite Party till **23.07.2025** (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 **23.09.2025**;
- 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 **23.09.2025**, the entire amount is to be refunded along with an interest @ **9% p.a.** calculated from the date on which each installment/payment was received by the Opposite Party till the actual realization of the amount.

34. 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. 4,00,000/- as cost for mental agony and harassment to the Complainants; and
- B.** The litigation cost to the extent of Rs. 50,000/-.

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

36. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
37. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:

23.07.2025

L.R.- ZA