

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

**Date of Institution: 08.04.2025**

**Date of reserving the order: 04.08.2025**

**Date of Decision: 04.09.2025**

**COMPLAINT CASE NO.- 23/2025**

**IN THE MATTER OF**

**ASHOK MARWAH**

S/O LATE SH. RAM BHEJA MARWAH

R/O W-24, GREATER KAILASH,

NEW DELHI-110048

**(Through: Mr. Mukesh Gahlot, Advocate)**

...Complainant

**VERSUS**

**M/S PARSVNATH DEVELOPERS LTD.**

(THROUGH ITS MANAGING DIRECTOR)

REGD. OFFICE: PARSVNATH TOWER,

NEAR SHAHDARA METRO STATION,

SHAHDARA, DELHI-110032

ALSO AT: GROUND FLOOR, ARUNACHAL BUILDING,

19, BARAKHAMBA ROAD, NEW DELHI

**(Through: Mr. T.P. Chauhan, Advocate)**

...Opposite party

**CORAM:**

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

Present: Mr. Mukesh Gahlot, counsel for the Complainant

Mr. T.P. Chauhan, counsel for the OP

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

## JUDGMENT

1. Brief facts of the case are that the Complainant's wife, Mrs. Poonam Marwah, with an intention to buy a residential flat for his son, approached the Opposite Party and booked a residential flat in the project of the Opposite Party, namely, '**Parsvnath Privilege**'. Accordingly, on 20.06.2007, the 'Flat Buyers Agreement was executed between the Complainant's wife and the Opposite Party for the flat bearing no. 701, Tower-18 admeasuring 1855 sq. ft., 'Parsvnath Privilege' Greater Noida, Uttar Pradesh. The total basic sale price of the said flat was Rs.54,72,250/-. Later on, Mrs. Poonam Marwah surrendered all her rights in respect of the flat in favour of Complainant. As per clause 10(a) of the agreement, the Opposite Party had agreed to complete the construction of the flat within a period of 36 months from the date of commencement of construction of the particular block in which the flat was located, on receipt of sanction of building plans and all other approvals subject to force majeure including any restraints/restrictions from any authorities, non-availability of building materials or disputes with contractors/work force and circumstances beyond the control of the Developer and subject to timely payments by the Buyers.
2. It is the case of Complainant that he himself also booked another flat bearing no. 1203, Tower-15 in the same project of the Opposite Party. However, due to prevailing circumstances, the Complainant cancelled the booking of flat bearing no. 1203, Tower-15 and the amount of Rs.23,68,665/- (**as per ledger issued by Opposite Party, Page 53 of complaint**) paid by the Complainant for flat bearing no. 1203 was adjusted towards the cost of flat bearing no. 701, Tower-18, which

was booked by his wife. Later on, the Complainant's wife transferred the ownership of flat bearing no. 701, Tower-18 in the name of Complainant and his father, namely, Sh. R.B. Marwah. Unfortunately, the Complainant's father died and, thereafter, the Complainant became the sole owner of the flat bearing no. 701, Tower-18 on 28.01.2016 after completion of all legal formalities.

3. It is the further case of Complainant that he had paid a total amount of Rs.56,86,848/- (including adjusted amount of Rs.23,68,665/- paid by the Complainant for the flat no. 1203, Tower-15), in respect of flat no. 701, Tower-18, as and when the same was demanded by the Opposite Party. But, the construction work of the project was not completed within the stipulated time and the Opposite Party was not able to hand over the possession of the flat till date. The Opposite Party did not even obtain the Occupancy Certificate/Completion Certificate from the concerned authorities, for the said project.

4. It is the further case of Complainant that the Opposite Party vide communication dated 28.08.2017 requested the Complainant to carry out finishing, interiors and furnishing work himself for which the Opposite Party would give rebate of Rs.6,00,000/-. But, the Complainant refused the said offer, as the process was costly and time consuming. Time and again, the Opposite Party gave assurances that the construction would be completed soon. The Complainant several times met with the representatives of the Opposite Party and requested for refund of his entire amount along with compensation. But, the Opposite Party did not consider his request. The Opposite Party acted in very irresponsible manner for which the Complainant and family suffered mental harassment and depression.

5. Aggrieved by the aforesaid conduct of the Opposite Party, the Complainant was left with no other option but to file the present complaint alleging deficiency of service and unfair trade practice on the part of the Opposite Party.
6. After filing of the complaint by the Complainants, the notice of the complaint was issued to the Opposite Party on 15.04.2025.
7. Upon service, the Opposite Party filed the written statement, wherein it was stated that the complaint is frivolous, vague and vexatious in nature. Hence, the same is liable to be dismissed in limine. The Complainant has not disclosed the fact that the he has also filed the similar complaint bearing no. NCR144/04/108197/2023 before the Real Estate Regulatory Authority, U.P seeking similar relief. It is settled law that the Complainant has choice to initiate proceeding either under the Consumer Protection Act or under Real Estate (Regulation and Development) Act, 2016. Hence, the complaint is not maintainable and the Complainant cannot be permitted to seek the same relief from more than one Court. The intention of the Complainant is to harass and arm-twist the Opposite Party to succumb to the flat no. 701 on 23.02.2007, which was allotted vide Provisional Allotment Letter. Subsequently, Flat Buyers Agreement was sent to her alongwith letter dated 21.05.2007, but she did not sign the Buyers Agreement. The Complainant was informed vide letter dated 10.06.2010 that the delay in completing the project was due to slowdown, experienced in the real estate sector and in the event of delay, the rights of the Complainant were duly protected as per clause no. 10(c) of the Buyers Agreement. The status of the project was communicated to the Complainant on various

occasions. The Complainant made the due payments after receiving various reminders. The Opposite Party had offered the sum of Rs.6,00,000/- to the Complainant for finishing work vide letter dated 28.08.2017. Owing to the delay, the Opposite Party had already given special rebate of Rs.7,32,725/- for delay compensation from December 2010 to June 2017.

8. It is the further case of Opposite Party that the Complainant intentionally suppressed various facts from this Commission. The Complainant also initiated the proceedings before Hon'ble NCLT, Delhi vide Case No. IB-2207/ND/2019, for the same dispute, but the same was withdrawn by Complainant on 21.04.2025. The Complainant is not a **"Consumer"** as he had merely invested in the real estate sector for commercial purposes. The Opposite Party did not violate any provisions of the Buyers Agreement. Since, the Complainant remained silent from the year 2017 to 2025, the complaint is barred by limitation according to Section 69 of Consumer Protection Act, 2019. The present complaint involves complicated questions of facts and law, which cannot be decided in summary procedure adopted by this Commission. The Greater Noida Authority had miscalculated the interest on lease premium and for that the allotment of project land was cancelled. The Opposite Party filed the Revision Petition before the Authority alongwith stay application. Since, the Authority did not consider the petition and stay application, the Opposite Party approached the Allahabad High Court, which directed the Authority to dispose of the Revision Petition and application within three months. On 11.09.2023, the Authority granted time to the Opposite Party to complete the project till April 2026.

9. The Complainant filed rejoinder to the written statement of Opposite Party, rebutting the averments made in the written statement filed by the Opposite Party.
10. The Complainant has filed evidence by way of his affidavit.
11. The Opposite Party had also filed evidence by way of affidavit of Mr. Yogesh Kharbanda, AVP(CRM) of Opposite Party.
12. The Complainant as well as the Opposite Party has filed their written arguments.
13. I have perused the material available on record and heard Ld counsel for the parties.
14. First, of all, I would like to deal with the preliminary objections taken by the Opposite Party.  
**“Whether the complaint filed by the Complainant is not maintainable.”**
15. It is the case of Opposite Party that the Complainant has also filed the complaint bearing no. NCR144/04/108197/2023 before the Real Estate Regulatory Authority, U.P and also initiated the proceedings before Hon’ble NCLT, Delhi vide Case No. IB-2207/ND/2019, for the same dispute. Thus, the Complainant cannot be permitted to seek the same relief from more than one Court.
16. Further, the Opposite Party has also moved an application vide diary no. 5932 dated 13.05.2025 for rejection of complaint on the same ground.
17. To resolve this issue, I would like to refer the Section 100 of the Consumer Protection Act, 2019, which is reproduced here for ready reference:

*“The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.”*

18. **Further, it is significant to note that the Opposite Party has admitted in its written statement that the Complainant had withdrawn the proceedings from Hon’ble NCLT on 21.04.2025.**

19. Further, the Complainant has filed reply to the application of Opposite Party for rejection of complaint, wherein it is submitted that he has already withdrawn the complaint filed by him before Real Estate Regulatory Authority, U.P on 17.06.2025.

20. Since, the dispute between the Complainant and the Opposite Party was not decided on merits by RERA U.P. and NCLT Delhi as Complainant had withdrawn the complaints pending before Real Estate Regulatory Authority, U.P as well as Hon’ble NCLT, I am of the considered view that the present complaint is maintainable before this Commission and the complaint cannot be dismissed on this ground.

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

21. It is the case of Opposite Party that the Complainant is not “Consumer as he had invested in the real estate sector for commercial purposes.

22. To resolve this issue, I deem it appropriate to refer to Section 2 (7) of Consumer Protection Act, 2019:

*“Section 2(7) 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;***

23. Further, I would like to refer 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, the Hon’ble National Commission has held as follows:

*“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.”*

24. Further, in **Anju Vinod Saraswat (Mrs.) Vs. Sahara Prime City Limited IV (2022) CPJ 206 (NC)**, it was held as under:

*“Onus of establishing that complainant was dealing in real estate, i.e., in purchase and sale of plots/flats for commercial purpose to earn profits lies upon opposite party.”*

25. In the present case, the Opposite Party has merely made a bald statement that Complainant is not a ‘Consumer’ as he had merely invested in the real estate sector for commercial purposes. However, on perusal of the record; I fail to find any material which shows that the Complainant was involved in the business of selling and purchasing of flats/shops on regular basis. Mere allegation, that the Complainant had invested in the real estate sector for commercial purposes, cannot be the ground to reject the complaint. Hence, I am of the considered view that the Complainant is ‘Consumer’ as defined in the Section 2(7) of the Consumer Protection Act, 2019. Consequently, the objection raised on behalf of the Opposite Party is answered in negative.

**“Whether the complaint is barred by limitation.”**

26. It is the case of Opposite Party that the Complainant remained silent from the year 2017 to 2025 and the complaint is barred by limitation according to Section 69 of Consumer Protection Act, 2019, and the complaint is liable to be dismissed.

27. To adjudicate this issue, it is imperative to refer Section 69 of the Consumer Protection Act, 2019:

*“Limitation Period.- (1) The District Forum, the State Commission or the National Commission shall not admit a*

*complaint unless it is filed within two years from the date on which the cause of action had arisen.*

*(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:*

*Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.”*

28. Analysis of Section 69 of the Consumer Protection Act, 2019 shows that this Commission is empowered to admit a complaint if it is filed within a period of 2 years from the date on which cause of action has arisen.

29. I deem it appropriate to refer the judgment of **Mehnga Singh Khera and Ors. Vs. Unitech Ltd.** reported in **I (2020) CPJ 93 (NC)**, wherein the Hon'ble National Commission has held as under:

*“The Opposite Party contested the complaint as being barred by limitation prescribed under section 24(a) of the Consumer Protection Act, 1986 since the last date stipulated in the buyers' agreement for giving possession of the flat expired more than 2 years ago. It is a settled legal proposition that failure to give possession of flat is continuous wrong and constitutes a recurrent cause of action and as long as the possession is not delivered to the buyers, they have every cause, grievance and right to approach the consumer courts. It is only when the seller virtually refused to give possession, that the period of limitation prescribed under section 24(a) of the Consumer Protection Act, 1986 would start. The Complainant has to file a case within two years from the date of refusal of delivery of possession to the buyer. In the present case, the Opposite Party has not refused possession of the flat to*

*the complainants at any point of time. Therefore, the cause of action continues to subsist in favour of the Complainant.”*

30. Applying the above settled law and considering the facts of the case that the Opposite Party has not refused, at any point of time, to hand over the possession of the flat to the Complainant in this case, but always kept assuring the Complainant that the construction would be completed soon. It is worth noting that the possession of the said flat is still pending; giving the Complainant a recurrent cause of action to file the present complaint.

31. Thus, it is held that the cause of action continues to subsist in favour of the Complainant and the present complaint is within the period of limitation and not barred by limitation.

**“Whether the complaint involves complicated question of facts and law.”**

32. To resolve this issue, it is imperative to refer to the dicta of the Hon’ble Supreme Court in **J.J. Merchant Versus Shrinath Chaturvedi (2002) 6 SCC 635** wherein it was inter alia held by the Hon’ble Supreme Court 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.”*

33. Returning to the facts of the present complaint and perusal of the record shows that the Complainant had availed the services of the Opposite Party for a consideration. Moreover, the Opposite Party had received the amount to the extent of Rs.56,86,848/- (more than 100% of the sale price of the said flat) from the Complainant and that too way back in the year 2013, on the false pretext of the Opposite Party that the possession of the flat would be handed over soon. What to talk of handing over possession of the said flat to the Complainant, even the construction at the site has not been completed till date by the Opposite Party. Aggrieved by the aforesaid, the Complainant filed the present complaint before this Commission and sought refund of his entire amount deposited to the Opposite Party, as he was 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 within the stipulated period of time.

34. Moreover, nothing cogent has been brought on record by the Opposite Party which would reflect that there are such complicated questions involved which could not be settled on the basis of the pleadings filed on behalf of the contesting parties. Consequently, I am of the considered view that the present complaint falls within the four corners of the jurisdiction of this Commission.

35. The **last question** for adjudication is **“whether the Opposite Party is deficient in providing its services to the Complainant or not.”**

36. 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.

37. In the present case, the 'Flat Buyers Agreement' dated 20.06.2007 was executed between the Complainant's wife and the Opposite Party for the flat bearing no. 701, Tower-18 admeasuring 1855 sq. ft. in the project of the Opposite Party, namely, '**Parsvnath Privilege**' Greater Noida, Uttar Pradesh, is evident from **Annexure-A (colly) Page 16 to 42 of complaint**. Thereafter, the Complainant's wife vide letter dated 22.11.2011 (**Annexure-B Page 43 of complaint**) requested the Opposite Party to transfer the ownership of flat in the name of her husband (Complainant herein) and father-in-law. Thereafter, the Opposite Party transferred the flat in the name of Complainant and Complainant's father on 03.02.2012 (**Page 44 & 45 of complaint**). Unfortunately, the Complainant's father died and, thereafter, the Complainant became the sole owner of the flat. Further, the payment to the extent of Rs.56,86,848/- received by the Opposite Party, is evident from the photocopies of the receipts as well as ledger issued by the Opposite Party (**Annexure-C colly Page 46 to 60 of complaint**).

38. The Complainant has categorically deposed that he had paid a total amount of Rs.56,86,848/- to the Opposite Party in respect of the booked flat, as and when the same was demanded by the Opposite Party. But, the construction work of the project is still pending and the Opposite Party was not able to hand over the possession of the flat till date. The Opposite

Party did not even obtain Occupancy Certificate/Completion Certificate from the concerned authorities, for the said project.

39. The Complainant has further deposed that the Opposite Party vide communication dated 28.08.2017 requested the Complainant to carry out finishing and interior work by himself for which the Opposite Party would give rebate of Rs.6,00,000/-. But, the Complainant refused the said offer, as the process was costly and time consuming. Time and again, the Opposite Party gave assurances that the construction would be completed soon. The Complainant several times met with the representatives of the Opposite Party and requested for refund of his entire amount along with compensation. But, the Opposite Party turned a deaf ear to his request. The Opposite Party acted in very irresponsible manner for which the Complainant and family suffered mental harassment and depression.

40. It is worth noting that Clause No. 10 (a) of the 'Flat Buyers Agreement' dated 20.06.2007 entered between the contesting parties reflects that the Opposite Party was duty bound to hand over the possession of the said flat within 36 months from the date of commencement of construction of the particular block in which the flat of Complainant was located. Further, it is noteworthy that it was for the Opposite Party to obtain sanction of building plan and other approvals. Further, the Opposite Party did not place on record any material to prove that construction of the project could not be completed on account of force majeure and non-availability of building materials or workforce or other circumstances, which were beyond the control of Opposite Party.

41. It is also worth noting that as per the 'Flat Buyers Agreement' (**Annexure-A colly of complaint**), the basic price of the said flat was Rs.54,72,250/- and the Complainant till date has already paid an amount of Rs.56,86,848/- to the Opposite Party and that too way back in the year 2013. However, till date the Opposite Party did not offer the possession of flat to the Complainant, as the same was not constructed by it.

42. It is a settled law that the Complainant cannot be expected to wait for an indefinite time period to get the benefits of his hard earned money, which he had spent in order to purchase the property in question. (**Ref: Fortune Infrastructure v. Trevor D'Lima reported at (2018) 5 SCC 442**)

43. Consequently, it is held that the Opposite Party is deficient in providing its services to the Complainant since it has failed to hand over the possession of the flat till date to him.

44. Accordingly, the complaint filed by the Complainant is hereby allowed.

45. Thus, the Complainant is entitled for the refund of the money deposited by him the Opposite Party.

46. Keeping in view the facts of the present case and the extensive law as discussed above, I direct the Opposite Party to refund the entire amount paid by the Complainants i.e., **Rs. 56,86,848/-** 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 **04.09.2025** (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 **04.11.2025**;

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 **04.11.2025**, 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.

47. 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.1,50,000/-** as cost for mental agony and harassment to the Complainant; and

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

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

49. 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.

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

**(BIMLA KUMARI)**  
**MEMBER (FEMALE)**

Pronounced On: **04.09.2025**