

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

Date of Admission: 07.12.2018

Date of Hearing: 08.08.2025

Date of Decision: 26.08.2025

**COMPLAINT NO.-1450/2018**

**IN THE MATTER OF**

**1. MR. RAJEEV MENON,**

S/O MR. TEELAKAT BALAKRISHAN MENON,

**RESIDENT OF:**

A-147, PATEL NAGAR 2<sup>ND</sup>,

GHAZIABAD, UTTAR PRADESH – 201001.

PRESENTLY RESIDING AT:

90 ROSE STREET WOOLLOOWIN, QUEENSLAND,  
4030 AUSTRALIA.

**THOURGH HIS POWER OF TTORNEY,**

**MR. NACHELIL KUMARAPILLAI KUMAR PILLAI,**

S/O LATE MR. RAGHVAN KUMAR PILLAI,

R/O HOUSE NO. 1391, SECTOR-9, FARIDABAD,

HARYANA-121102.

**2. MRS. VEENA R. MENON,**

D/O MR. NACHELIL KUMARAPILLAI KUMAR PILLAI,

RESIDENT OF A-147, PATEL NAGAR 2<sup>ND</sup>,

GHAZIABAD, UTTAR PRADESH – 201001.

**PRESENTLY RESIDING AT:**

90 ROSE STREET WOOLLOOWIN, QUEENSLAND,  
4030 AUSTRALIA.

**3. MR. NACHELIL KUMARAPILLAI KUMAR PILLAI,**  
S/O LATE MR. RAGHVAN KUMAR PILLAI,  
R/O HOUSE NO. 1391, SECTOR-9, FARIDABAD,  
HARYANA 121102.

(Through: Mr. Manoj Kumar Jha, Advocate)

...Complainants

**VERSUS**

**1. E-HOMES INFRASTRUCTURE PVT. LTD.,**  
THROUGH ITS CEO, DASNAC ANNEXE I,  
**2. MR. JINENDRA KUMAR JAIN (CHAIRMAN)**  
DASNAC HOLDING PVT. LTD.  
**3. MR. ARIHANT KUMAR JAIN (DIRECTOR)**  
DASNAC HOLDING PVT. LTD.,  
**ALL AT:**  
ECE HOUSE, 28A KASTURBA GANDHI MARG,  
NEW DELHI – 110001.

(Through: Mr. Srinivasan Ramaswamy, Advocate)

...Opposite Parties

**CORAM:**

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

Present: Complainant in person, & Mr. Manoj Kumar Jha, Counsel for  
the Complainant (Email:advmanojjha1970gmail.com)  
Mr. Srinivasan Ramasway, Counsel for the Opposite Parties

**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 delay and deficiency of service on the part of Opposite Parties and have prayed for the following relief :-

- i. *to take back the inflated demand notice of Rs. 15,25,120/- (Rupees fifteen lakh twenty five thousand one hundred fifty only) and the cancellation later dated 11.05.2018.*
- ii. *to give possession to the complainant of flat.*
- iii. *Expenses Spent by the complainant on telephonic calls, mails, and personal visits to the opposite party's office i.e. Rs. 50,000/-.*
- iv. *Rs. 5, 00,000/- towards the damages suffered by the complainants on account of mental agony, harassment, humiliation, mental tension;*
- v. *Rs. 51,000/- towards litigation charges.*
- vi. *Any other relief, which this Hon'ble Forum may deems fit and proper may also be granted to the complainants against the opposite party”*

2. The brief facts necessary for the adjudication of the present case are that the Complainants booked a flat bearing No. D-2202 in Tower-D for a total consideration of Rs.72,61,000/- in the project “*The Jewel of Noida*” of the Opposite Parties, situated at Plot No. 14, Sector-75, Noida, Gautam Buddh Nagar, Uttar Pradesh. An allotment agreement dated 26.04.2017 was executed between the Complainants and Opposite Party no.1. Accordingly, the Complainants paid Rs.1,00,000/- on 28.04.2017 and Rs.9,89,150/- on 31.05.2018 and in both the receipts issued by the Opposite Party, the columns for sales tax and service tax were shown as ‘zero’.

3. Thereafter, the Complainants obtained a loan of Rs.58, 08,800/- from PNB Housing Finance, which was sanctioned on 27.07.2017. A tripartite agreement was executed between the parties on 27.07.2017 and again, in the receipt issued, the sales tax and service tax were mentioned as 'zero'. The Complainants had made a total payment of Rs.68,97,950/- to the Opposite Parties, which amounts to 95% of the total consideration of the said flat. The remaining amount of Rs. 3,63,050/- was to be paid at the time of possession.
4. Furthermore, the Complainants made several communications regarding the possession of the said flat but the Opposite Parties failed to give any satisfactory response. Thereafter, the Complainants were shocked to receive an undated demand letter for Rs. 15,25,120/-. The Complainants objected to the said demand but Opposite Party No. 1 stated that the aforesaid amount included Service Tax and GST. However, Opposite Party No. 1 had never mentioned this earlier and after the Complainants had already paid 95% of the sale consideration, the Opposite Party no.1 demanding such an exorbitant amount in the form of tax at this belated stage. Instead of resolving the issue raised by the Complainants, the Opposite Party No. 1 issued a letter dated 11.05.2018, whereby it cancelled the allotment of the said flat. Aggrieved by the act of the Opposite Parties, the Complainants sent a legal notice dated 07.07.2018 seeking a refund of the inflated amount and cancellation charges, but to no avail.
5. The Opposite Parties have contested the present case and raised preliminary objections regarding its maintainability. The counsel for the Opposite Parties submitted that the Complainants are not a "consumer" within the definition of Section 2(1)(d) of the Consumer Protection Act,

1986, as the Complainants purchased the said flat for investment purposes. The counsel for the Opposite Parties further submitted that the allotment letter was executed between the Opposite Party No. 1 and the Complainants; therefore, the Complainants are bound by the terms and conditions of the said agreement and are liable to pay the total sale consideration along with applicable government taxes and charges. He further submitted that the Complainants suppressed the fact that the Opposite Party No. 1 had offered possession to them vide letter dated 11.04.2018, which was returned with the remarks “left the house without informing new address.” Moreover, the Opposite Party No. 1 vide email dated 20.04.2018 informed the Complainants about the possession of the said flat through the letter dated 11.04.2018 but the same was again returned undelivered. It was also submitted that the Opposite Party No. 1 vide letter dated 03.05.2018, clearly provided the justification regarding the outstanding dues of Rs.12,89,891/-. Furthermore, the receipts issued by the Opposite Party No. 1 did not state that the service tax or other applicable taxes were not borne by the Complainants.

6. The counsel for the Opposite Parties further submitted that the Opposite Parties completed the flat well within the stipulated time and also offered possession to the Complainants. Lastly, he submitted that, as per the terms and conditions of the allotment agreement, the Opposite Party No. 1 is entitled to forfeit 10% of the total sale consideration in the event of cancellation of the flat allotted to the Complainants. Pressing the aforesaid objections, the Opposite Parties prayed for dismissal of the present complaint.

7. The Complainants have filed the Rejoinder rebutting the written statement filed by the Opposite Parties. Both the parties have filed their Evidence by way of Affidavit in order to prove their averments on record.
8. The Complainants have filed written arguments and reiterated the allegations made in the present complaint.
9. The Opposite Parties have also filed written arguments and denied all the allegations made by the Complainants.
10. We have perused the material available on record and heard the counsel for the parties.
11. The fact that the Complainants booked the said flat from the Opposite Parties is evident from the allotment agreement dated 26.04.2017. Payment to the extent of Rs.68,97,950/- by the Complainants to the Opposite Parties is not disputed by them.
12. The first question for consideration before us is **whether Complainants fall in the category of 'consumer' under the Consumer Protection Act, 1986?**
13. The Opposite Parties contended that the Complainants are not *Consumer* as defined under the Consumer Protection Act, 1986 as they invested the money to earn profit, which amounts to commercial purpose. To resolve this issue, we deem it appropriate to refer to *Aashish Oberai Vs Emaar MGF Land Limited* reported in *I (2017) CPJ 17(NC)* wherein it is 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.”*

14. The above dicta reflect that a person may purchase separate houses for the individual use of his family members. In the present case, the fact that the Complainants are residing in Australia cannot be a valid ground to hold that they are not consumers, as the flat could very well have been purchased for the use of their family members.
15. It is imperative to refer to the dicta 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 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 *Kavit 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.”*

16. From the aforesaid dicta of the Hon’ble National Commission, it flows that it is for the Opposite Parties to prove that the flat purchased was for commercial purpose, by way of some documentary proof and a mere bald statement is not sufficient to raise adverse inference against the Complainants.

17. In the present case, the Opposite Parties have merely made a statement that the Complainants purchased the said flat for commercial purpose and on perusal of the record before us, we fail to find any material which shows that the Complainants are engaged in the business of purchasing and selling houses and/or plots on a regular basis, solely with a view to make profit by sale of such flats. Mere allegation, that the purchase of the property is for commercial purpose, cannot be the ground to reject the present consumer complaint. Consequently, the objection raised on behalf of the Opposite Parties is answered in the negative.
18. The *main question* for the adjudication before us is **whether the Opposite Parties is actually deficient in providing its services to the Complainants.**
19. The expression deficiency of services is defined in Section 2 (1) (g) of the Consumer Protection 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."*
20. The expression 'service' in Section 2(1)(o) of the Consumer Protection Act, 1986 is defined as:
- (o)"service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service"*
21. The above provision reflects that the "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner

of performance on the part of the builder with respect to its contractual obligations.

22. On perusal of the record, it is noted that the total sale consideration of the flat is Rs.72,61,000/- and the Complainants had already paid a total amount of Rs.68,97,950/- towards the said consideration i.e., 95% of the total sale consideration of the flat. Moreover, the remaining 5% was payable at the time of possession as per the opted payment plan of the Complainants. However, it is clear from the undated letter issued by the Opposite Party no.1 that it had demanded an additional amount of Rs.15,25,120/- from the Complainants. When this additional amount was objected to by the Complainant, the Opposite Party no.1, citing Service Tax and GST, sought to charge Rs.8,25,739/- from the Complainants.
23. Here, it is pertinent to note that the Opposite Parties had never raised any demand for Service Tax or GST earlier during the course of construction and the Complainants had already paid 95% of the sale consideration. Moreover, the receipts issued by the Opposite Party no.1 on 28.04.2017 and 31.05.2018 clearly reflected "Zero" in the columns for Sales Tax and Service Tax. Furthermore, the receipts issued to the Complainants after the execution of the tripartite agreement dated 27.07.2017 also showed "Zero" in the tax columns.
24. Additionally, the Opposite Parties contended that the "Zero" mentioned in the receipts does not imply that no tax was payable but the Opposite Parties failed to place any documentary evidence to prove that such tax was to be recovered at a later stage, i.e., at the time of possession. Also, neither the Allotment Agreement dated 26.04.2017 nor the Payment

Schedule contains any clause stipulating that Service Tax or GST would be charged at the time of possession.

25. Therefore, we are of the considered view that the Opposite Parties attempted to charge an extra and arbitrary amount from the Complainant under the guise of Service Tax and GST despite the fact that the Complainant had already paid 95% of the total sale consideration. As a result, in the absence of evidence, the demand for such an exorbitant amount of Service Tax, Sale Tax and GST at this belated stage is arbitrary and unjust.
26. Consequently, we hold that the letter issued by the Opposite Parties demanding Rs.15,25,120/- including Service Tax, Sales Tax, GST and the cancellation letter dated 11.05.2018 in respect of the said allotment are arbitrary and without justification.
27. Relying on the above discussion, we hold that the Opposite Parties are deficient in providing its services to the Complainants in charging extra payment towards the said flat and in arbitrarily cancelling the allotment thereof.
28. Keeping in view the facts of the present case and the law discussed above, ***we direct the Opposite Parties to hand over the physical, vacant, and peaceful possession of the said flat to the Complainants within a period of two months from the date of this judgment. The Complainants shall, within the same period of two months, clear the remaining outstanding dues, if any, in accordance with the payment plan under the Allotment Agreement.***
29. In addition to the aforesaid and taking into consideration the facts of the present case, the Opposite Parties are directed to pay a sum of:

- A. *Rs. 3,00,000/- as cost for mental agony and harassment to the Complainants; and*
- B. *The litigation cost to the extent of Rs. 50,000/-.*

30. If the Opposite Parties fails to comply with the directions given in paragraph 28 of this judgment, the Complainants may approach this Commission under section 25 and 27 of the Consumer Protection Act, 1986.
31. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
32. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
33. File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)**  
**PRESIDENT**

**(PINKI)**  
**MEMBER (JUDICIAL)**

Pronounced On:

**26.08.2025**

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