

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

**Date of Institution : 26.09.2016**  
**Date of Reserving the order : 19.09.2025**  
**Date of Decision : 29.10.2025**

**FIRST APPEAL NO.- 448/2016**

**IN THE MATTER OF**

**Sh. Vijay Kumar**

S/o Sh. C.R. Gupta

R/o E-149, Saket, New Delhi

**(Mr. Pankaj Jain, Advocate)**  
**.....Appellant**

**VERSUS**

**Ahluwalia Contracts (India) Ltd.**

Registered Office:

Ahluwalia House, 4, Community Centre,  
Saket, New Delhi-110007

Also at:

B-4/205, Safdarjung Enclave,  
New Delhi

**(Mr. Sunil Mund, Advocate)**  
**.....Respondent**

**CORAM:**

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

Present: Mr. Pankaj Jain, counsel for the Appellant  
Mr. Vedant Mund, counsel for the Respondent

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

**ORDER**

1. By this judgment, I shall dispose of the appeal filed by the Appellant, Vijay Kumar against the impugned order dated 20.07.2016 passed by Ld District Consumer Disputes Redressal Forum-II, Udyog Sadan, C-22 & 23, Qutub Institutional Area, New Delhi in Complaint Case No. 731/2009 titled as Vijay Kumar Vs. Ahluwalia Contracts (India) Ltd.
2. Brief facts of the case as per the complaint are that the Complainant (*Appellant herein*) booked a residential apartment bearing no. 410, 4<sup>th</sup> Floor admeasuring 1305 sq. ft. in the project, namely, 'Ahlcon Apartment' of the Opposite Party. The total sale consideration of said apartment was Rs.6,26,000/-. The Complainant paid a total sum of Rs.3,24,000/- to the Opposite Party, which was duly acknowledged by the Opposite Party. However, the Opposite Party did not complete the construction within time and did not deliver the possession of flat to the Complainant. As and when, the Complainant visited the office of Opposite Party, he was assured that construction work was nearly completion but would take more time. The Opposite Party issued letter dated 20.01.1992 to the Complainant thereby raising 5% demand of installments as required to complete the project in time. Further, the Opposite Party vide letter dated 08.09.1999 informed the Complainant that the possession would be handed over in first week of October 1999 after the full and final due payment was made. The Opposite Party vide letter dated 14.04.2000 offered possession of the unit with request to deposit the outstanding amount including escalation charges with alleged 24% interest. A summary of amount was also attached with the letter, which disclosed that the Opposite Party raised an outstanding

balance of Rs.9,93,983.43 against the original sale consideration of Rs.6,26,400/-. The Opposite Party erroneously raised interest for a sum of Rs.4,24,405.65 for delay payment. But, the Opposite Party itself was negligent and deficient in service for not handing over the possession within the stipulated time. The Opposite Party without giving the physical possession of unit issued maintenance bill of Rs.88,740/- and was also charging 10% interest on that amount. Whenever, the Complainant visited the office of Opposite Party with the balance amount, the Opposite Party refused to hand over the possession and threatened to allot the unit to third person. The Complainant was always willing to pay the balance amount of total sale consideration of Rs.6,26,400/- to the Opposite Party.

3. The Complainant filed the consumer complaint bearing no. 125/2006 before the Ld District Forum claiming damages to the tune of Rs.40,00,000/- as well as allotment of flat in question to him. But, due to the increase in the price of flat, the said complaint was withdrawn by him. Ld District Forum vide order dated 05.02.2008 also granted liberty to the Complainant to file the fresh complaint before the competent Forum.
4. Thereafter, the Complainant filed the complaint bearing no. 36/2008 before the State Commission. But, vide order dated 19.03.2008, the State Commission remitted the case to the District Forum on account of pecuniary jurisdiction as the amount of compensation, allegedly suffered by the Complainant was not exceeding Rs.20,00,000/-
5. Thereafter, the Complainant filed the complaint bearing no. 731/2009 before the Ld District Forum.

6. Upon service, the Opposite Party filed the written statement before Ld District Forum, wherein it was submitted that the Complainant himself was defaulter in making the payments and did not make the payment as per the schedule of payment prescribed in the Agreement. The Complainant was not interested in taking the possession of unit as several opportunities were given to the Complainant to take possession. Last opportunity was given to him vide letter dated 01.06.2005 by the Opposite Party to deposit the money and to take the possession of flat, but the Complainant did not show any interest in the property and did not pay any attention to subsequent letters written by the Opposite Party to him. Thereafter, the apartment in question was sold to one Mr. Arvind Panwar by Sale Deed dated 04.03.2006. There is no deficiency in service on the part of Opposite Party and the complaint deserved to be dismissed.
7. The Complainant filed the rejoinder to the written statement of Opposite Party before the Ld District Forum.
8. The Complainant and Opposite Party filed their respective evidence by way of affidavits before the Ld District Forum as well as the written arguments.
9. However, none of the parties appeared before Ld District Forum to advance oral arguments.
10. Ld District Forum on the basis of material on record passed the following order: -

*“Without burdening the order with a lengthy discussion we hold that there is ample evidence on the record to prove that the OP infact sold the flat in question to one Arvind Panwar on 04.03.2006 vide sale deed no. 6492, Volume No. I in the office of the Sub-Registrar, Ghaziabad even*

*before filing complaint CC No. 125/06 and no doubt, before filing the present complaint despite that the complainant has again come to this forum in the present complaint with the same prayers. When the flat in question had already been sold out to the third party, how can the said flat be directed to be allotted to the Complainant.*

*On 13.04.2006, we advised the parties to sit together and negotiate for amicable settlement. The matter was adjourned to 01.06.2016. However, on 01.06.2016 none appeared on behalf of the complainant. Counsel for the OP stated that the OP is ready to refund the principal amount to the complainant. The matter was adjourned to 12.07.2016. However, on that date also none appeared on behalf of the complainant.*

*In the facts and circumstances of the case discussed hereinabove, we are of the opinion that amount of Rs.3,24,000/- can be directed to be refunded to the complainant along with appropriate interest. There was certainly deficiency in service on the part of the OP in not completing the construction of the flats including the flat in question with the stipulated period. However, at the same time the complainant also did not show any keen interest in paying the installments to the OP in time. Firstly, he filed CC No. 08/36 before the State Commission. Now, he again filed the complaint with the same prayer as contained in CC No. 125/06. In these circumstances we hold that the complainant is entitled to the interest @ 6% p.a. from the date of filing of the present complaint i.e. w.e.f. 26.09.2009.*

*In view of the above discussion, we partly allow the complaint and direct the OP to refund Rs.3,24,000/- along with interest @ 6% from 26.09.2009 till the date of realization to the complainant within one month from the date of receipt of copy of this order failing which the OP shall become liable to pay interest @ 7% p.a. on the*

*amount of Rs.3,24,000/- from the date of filing of the complaint till its realization.”*

11. It is the case of Appellant that the Ld District Forum failed to consider that the Respondent admitted that it had received the sum of Rs.3,24,000/- at different stages from the Appellant w.e.f. 1989 to 1992. The Ld District Forum did not consider that the Respondent was liable to refund the entire money along with interest @ 12% in terms of 'Flat Buyers Agreement'. The Ld District Forum failed to consider that the direction for refund of money should be given from the date of receiving the amount and not from the date of filing of complaint.
12. However, the Appellant has prayed during arguments that the Respondent be directed to refund the sum of Rs.3,24,000/- along with interest @ 12% from the date of filing of complaint no. 731/2009 till realization.
13. Notice of the appeal was issued to the Respondent on 24.10.2016 & 10.04.2017.
14. On 26.09.2017, Mr. Rajesh Pandit, Advocate had appeared on behalf of the Respondent and the copy of appeal was supplied to him with direction to file the reply to appeal within a period of eight weeks.
15. However, the Respondent did not file reply to appeal despite several opportunities. Thus, the right of the Respondent to file reply to the appeal was closed by Ld Predecessor vide order dated 11.03.2020.
16. The Appellant has filed the written arguments.

17. The Respondent has also filed the written arguments.

18. I have heard the Ld counsel for parties.

19. I have also gone through the material available on record.

20. **The only question for consideration is whether there is any illegality or material irregularity in the order passed by Ld District Forum.**

21. In the present case, Ld District Forum has categorically observed in the impugned order that there was deficiency in service on the part of Respondent in not completing the construction of the flats including the flat in question within the stipulated period. Hence, it allowed the complaint of Complainant (*Appellant herein*) and directed the Opposite Party (*Respondent herein*) to refund the sum of Rs.3,24,000/- along with interest @ 6%. Ld District Forum has further observed that **since the Appellant was not interested in paying installments to the Respondent in time, the interest @ 6% was awarded to him from the date of filing of complaint and not from the date of payment.**

22. It is worth noting that the Appellant has not challenged the impugned order on merits and only prayed that the interest awarded by the Ld District Forum be increased from 6% to 12% as per the Builder Buyers Agreement.

23. To resolve this issue, I would like to refer to clause 3 of the Builder Buyers Agreement (**Annexure-A2 Page 33 to 40 of appeal**), which reads as under:

*“That it is hereby understood and agreed by and between the parties that, if for any reasons, any changes are*

*made by the sanctioning authorities, or otherwise such changes are desired by the Company, the Company shall have right to effect suitable and necessary alterations in the plans or layout plans, if and when found necessary, which alterations may involve all or any of the changes namely in the position of the Said Apartment, change in the number of the Said Apartment, and change in the boundaries or floor. It is further understood, agreed and declared that to implement any or all of the above changes supplementary agreement, if necessary, will be executed. It is also agreed, understood and declared that if due to the result of such changes, there is any increase/decrease in the Super Area, the revised price will be applicable at the original rate at which the Said Apartment was booked/allotted.*

***However, for any reasons, whether within or outside control of the Company, the Company is not in a position to transfer the Said Apartment to the Allottee(s) the Company shall be responsible to consider for any alternative property or to refund of the amount paid by the Allottee(s) with a simple interest @ 12% p.a.”***

24. Since, the Respondent had agreed to refund the amount paid by the Appellant along with simple interest @12% p.a. as per the Builder Buyers Agreement in case of company was not in a position to transfer the unit to the Appellant, I am of the considered view that the Ld District Forum was not right in awarding only 6% interest to the Complainant.

25. In view of the above facts, the impugned order passed by Ld District Forum is modified to the extent that Respondent will refund the amount of Rs.3,24,000/- along with simple interest @ 12% p.a. from the date of filing of complaint till realization of amount.

26. **It is further worth noting that the awarded amount along with interest totaling Rs.4,58,190/- has already been paid by the Respondent to the Appellant by way of demand draft dated 17.10.2016 in favour of Appellant and was encashed on 07.11.2016 as submitted by the Respondent in para 9 of the written arguments.**
27. **Thus, the Respondent will pay the balance amount of interest calculated @ 12% p.a. on amount of Rs.3,24,000/-from the date of filing of complaint till realization.**
28. Accordingly, the appeal filed by the Appellant stands allowed.
29. However, in the facts and circumstances of the case, the parties shall bear their own costs.
30. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
31. 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.
32. File be consigned to record room along with copy of this judgment.
33. Trial court record, if any, be sent back alongwith copy of this judgment.

**(BIMLA KUMARI)  
PRESIDING MEMBER**

**Pronounced on 29.10.2025**