

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

**Date of Institution: 26.06.2019**

**Date of Hearing: 14.10.2025**

**Date of Decision: 15.10.2025**

**COMPLAINT CASE NO.- 608/2019**

**IN THE MATTER OF**

**1. MS. MADHU,  
D/O MR. NAURANG SINGH,**

**2. MR. SANJAY KUMAR,  
S/O MR. VEDRAM,**

**BOTH R/O- H. NO. C-7, SHASTRI PARK,  
NEAR SEELAMPUR, SHAHDRA,  
DELHI.**

**(Through: Mr. Ajay Swami, Advocate)**

...Complainants

**VERSUS**

**1. M/S PARSVNATH DEVELOPERS LTD.,  
6<sup>TH</sup> FLOOR, ARUNACHAL BUILDING,  
19, BARAKHAMBA ROAD, NEW DELHI 110001.**

**2. MR. PRADEEP JAIN, CHAIRMAN,  
6<sup>TH</sup> FLOOR, ARUNACHAL BUILDING,  
19, BARAKHAMBA ROAD, NEW DELHI 110001.**

**3. MR. SANJEEV JAIN, MANAGING DIRECTOR & CEO,  
6<sup>TH</sup> FLOOR, ARUNACHAL BUILDING,  
19, BARAKHAMBA ROAD, NEW DELHI 110001.**

**(Through: KNM & Partners)**

...Opposite Parties

**CORAM****HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)****HON'BLE MS. BIMLA KUMARI, MEMBER (FEMALE)**

Present: Mr. Ajay Swami, Counsel for the Complainants.  
Mr. T.P. Chauhan & Ms. Tanvi Garg, Counsel for the Opposite Parties.

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

1. The present Consumer Complaint being returned from the District Commission on the ground of pecuniary jurisdiction, has been filed under Section 17 of the Consumer Protection Act, 1986, by the Complainants before this Commission alleging deficiency in service and unfair trade practices by the Opposite Parties and has prayed the following reliefs:

*(a) "Refund the amount of Rs: 4,00,000 (Rupees Four Lacs only) paid towards booking of flat No. B1-705 in Parsvnath Palacia, Greater Noida, U.P. alongwith interest @ 24% p.a. accrued thereon till date; and*

*(b) Further pay compensation/damages of Rs.5,00,000 (Rupees Five Lacs only) towards the sufferings & hardships caused to the Complainants, as claimed herein-above;*

*Any other relief, which this Hon'ble Forum deems fit and proper in the circumstances of the case, may also be passed in favour of the Complainants and against the Opposite Parties."*

2. Brief facts necessary for the adjudication of the present complaint are that the Complainants paid an amount of Rs. 4,00,000/- as advance amount for the present and future project of the Opposite Parties in the year 2006. Thereafter vide letter dated 22.06.2007, the Opposite Parties allotted a Flat bearing no. B1-705 in the project namely 'Parsvnath Palacia' situated at Greater Noida, Uttar Pradesh to the Complainants. As per the initial information given at the time of booking, the Complainants were assured

with regard to the possession of the Flat in question which was to be handed over to the Complainants in the year 2010. However, the Opposite Parties failed to initiate the construction and the Complainants got surprised when they received the letter dated 11.09.2010, wherein the Opposite Parties assured to complete the construction of the project by June, 2012. Further, on various occasions, the Complainants visited the office of the Opposite Parties in order to enquire about the details and status of construction, however, the Opposite Parties failed to give any satisfactory explanation to the Complainants regarding the completion of project. The Complainants also sent a legal notice dated 22.12.2014 to the Opposite Parties asking for the refund of the amount already paid by the Complainants but was of no avail.

3. The Opposite Parties have contested the present case and have raised preliminary objections as to the maintainability of the complaint case. The counsel of the Opposite Parties submitted that the Complainants are not 'consumer' under the Consumer Protection Act, 1986 as they invested the money to earn profit, which amounts to commercial purpose. He further submitted that the Complainants have no cause of action to file the present complaint. The counsel for the Opposite Parties also contended that the present complaint involves complicated question of facts and law, which require detail examination and cross examination of witnesses and the same cannot be adjudicated in a summary procedure before this Commission. The counsel for the Opposite Parties lastly contended that the delay, if any, occurred on account of global recession and the liability of the Opposite Party on account of delay is duly provided as per the Flat Buyer Agreement and therefore, this Commission does not have the jurisdiction to adjudicate the present complaint. Pressing the aforesaid objections, the counsel appearing on behalf of the Opposite Parties prayed that the complaint should be dismissed.

4. 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.
5. The written arguments have also been filed by the parties and the same have been duly considered by this Commission at the time of arguments addressed by the parties.
6. We have perused the material available on record and heard the counsel appearing on behalf of the parties.
7. The fact that the Complainants have been allotted a Flat bearing no. B1-705 with the Opposite Party is evident from the letter dated 22.06.2007. Payment to the extent of Rs. 4,00,000/- by the Complainants to the Opposite Parties is also not disputed by the Opposite Parties.
8. The *first question* for consideration before us is *whether the Complainants fall within the category of 'Consumer' as defined under The Consumer Protection Act, 1986*
9. 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.
10. 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.”*

11. 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.”*

12. 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.
13. In the present case, the Opposite Parties have merely made a statement that the Complainants purchased the Flat in question 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.

14. The next question for consideration before us is *whether the Complainants have any cause of action to approach this Commission?*
15. To answer this question, it is imperative to refer to Section 24A of the Consumer Protection Act, 1986 wherein it is provided as under:-

***“24A. 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 has 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 as this 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.”*

16. Analysis of Section 24A of the Consumer Protection Act, 1986 leads us to the conclusion that this Commission is empowered to admit a complaint if it is filed within a period of two years from the date on which cause of action has arisen. It is clear in the present case that the Opposite Parties till date has failed to handover the possession of the allotted Flat in question to the Complainants.
17. We further deem it appropriate to refer to **Mehnga Singh Khera and Ors. Vs. Unitech Ltd.** as reported in **I (2020) CPJ 93 (NC)**, wherein the Hon’ble National Commission has held as under:

*“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.”*

18. Applying the above settled law, it is clear that the Complainants are within their right to file the present complaint as the possession and completion of construction are still pending and has not seen the light of the day; giving the Complainants a recurrent cause of action to file the present complaint.
19. The *next question* for consideration is *whether the present complaint involves complicated question of facts and law, which should be decided by the civil court?*
20. The Opposite Parties contended that the jurisdiction of this Commission would be barred since the present complaint is in fact a suit for recovery on which court fees is payable and would lie in a Civil Court and the Complainants in order to save the payment of court fees has filed the complaint under the Consumer Protection Act, 1986. Moreover, the complicated question of facts and law which have been raised in the present complaint can only be decided before the Civil Court.
21. It is pertinent to note here that 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, they take a step back.
22. Deficiency has been defined under section 2 sub-clause (g) which reads as follows:
- “(2) (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;”*
23. Returning to the facts of the present complaint, the perusal of the record shows that the Complainants avail the services of the Opposite Parties for a consideration. However, the Opposite Parties failed to handover the possession of the said Flat in question, aggrieved by which, the

Complainants have sought refund of the amount paid by them. 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 Parties i.e., the failure of the Opposite Parties to handover the possession of the said Flat and it is only due to this reason, that the refund of the amount paid is sought from the Opposite Parties, which this Commission is authorised to adjudicate.

24. Having discussed the preliminary objections raised on behalf of the Opposite Parties, the *last question* for consideration before us is *whether the Opposite Parties are deficient in providing its services to the Complainants.*
25. 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. On perusal of record, we do not find any document/ evidence which shows us the stipulated time within which the possession of the said Flat was to be handed over by the Opposite Parties. However, it is appropriate to refer to the recent pronouncement of Hon'ble National Commission in ***First Appeal no. 348/2016*** titled as "***Ajay Enterprises Pvt. Ltd. and Ors. vs. Shobha Arora and Ors.***" decided on **10.05.2019**, wherein the Hon'ble National Commission has held as under:

*".....under Section 46 of the Indian Contract Act, 1872, the following provision is there:*

*46. Time for performance of promise, where no application is to be made and no time is specified - Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.*

*Explanation - The question "what is a reasonable time" is, in each particular case, a question of fact".*

*19. from the above provision it is clear that if there is no time limit for the performance of a particular promise given by one party, it is to be performed within a reasonable time. In most of the builder buyer agreements, the period ranges from 24 to 48 months and the most common agreement seems to be for 36 months plus grace period of six months for completion of*

*construction and delivery of possession. If the possession is delivered beyond 42 months or beyond 48 months, the deficiency in service on the part of the Opposite Party shall stand proved.*”

27. The aforesaid dicta make it clear that if the possession is delivered beyond 42 or 48 months by the builder, then the deficiency on the part of the builder stand proved. In the present case, the Opposite Parties have failed to handed over the possession of the said Flat till date. Therefore, the deficiency on the part of the Opposite Parties stands proved.
28. Further, we find that the Opposite Parties have submitted that they have sent various reminders to the Complainants regarding the payment of the dues, however, we find that no evidence or document with respect to the construction, has been filed by the Opposite Parties in order to show whether the construction was completed by the Opposite Parties within stipulated time. Additionally, we find that the Opposite Parties have failed to execute Flat Buyer Agreement with the Complainants and therefore, it is clear that the amount deposited by the Complainants in the present matter has been utilized by the Opposite Parties, for their own benefit and on the other hand, the Complainants were not provided anything in return. The circumstances clearly show that the Opposite Parties made false representation of facts about the project namely “Parsvnath Palacia’ situated at Greater Noida, U.P. As a result, the act and conduct of the Opposite Parties are clear case of misrepresentation and cheating against the consumers, which resulted in the injury and loss of opportunity to the Complainants.
29. The Opposite Parties further submitted that the delay in handing over the possession was on account of global recession which hit economies all over the world including the Indian Economy, but more particularly the real estate sector. We are of the considered view that neither any new legislation was enacted nor any existing rule, regulation or order was

amended stopping, suspending or delaying the construction of the project in which the Flats were agreed to be sold to the Complainants. There was no evidence of any lock-out or strike by the labour at the site of the project. There was no civil commotion, war, enemy action, terrorist action, earthquake or any act of God which could have delayed the completion of project within the time stipulated by the Opposite Parties. Therefore, this contention of the Opposite Parties, holds no merit.

30. Keeping in view the facts of the present case and the extensive law as discussed above, we direct the Opposite Parties to refund the entire amount paid by the Complainants i.e., **Rs. 4,00,000/-** 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 Parties till **15.10.2025** (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 Parties pays the entire amount on or before **15.12.2025**;
- C. Being guided by the principles as discussed above, in case the Opposite Parties fails to refund the amount as per the aforesaid clause (A) on or before **15.12.2025**, 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 Parties till the actual realization of the amount.

31. 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. 1,00,000/- as cost for mental agony and harassment to the Complainants; and
- B. The litigation cost to the extent of Rs. 50,000/-.

32. Applications pending, if any, stands disposed of in terms of the aforesaid judgment.
33. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
34. File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)  
PRESIDENT**

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

Pronounced On: **15.10.2025**

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