

IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL
COMMISSION

Date of Institution: 28.02.2017

Date of Hearing: 07.07.2025

Date of Decision: 28.10.2025

COMPLAINT CASE NO. 342/2017

IN THE MATTER OF

1. MRS. REENA AGGARWAL,
W/O. DR. R.S. GUPTA,
R/O 677-A NYAYA KHAND-II,
INDIRA PURAM,
GHAZIABAD-201014.

...Complainant No. 1

2. DR. R.S. GUPTA,
R/O 677-A NYAYA KHAND-II,
INDIRA PURAM,
GHAZIABAD-201014.

...Complainant No. 2

VERSUS

1. M/S. K.D.P. INFRASTRUCTURE PVT. LTD,
THROUGH ITS MANAGING DIRECTOR,
CORPORATE OFFICE:
D-247/29, SECTOR-63,
NOIDA, DISTT. GAUTAM BUDDHA NAGAR-201301.
REGD. OFFICE:
(i) A-213, SHANTI GOPAL CHAMBERS
II FLOOR, VIKAS MARG,
DELHI-110092.
(ii) UB-19, ANTRIKSH BHAWAN,
K.G. MARG CONNAUGHT PLACE,
NEW DELHI-110001.

...Opposite Party No. 1

2. CHIEF MANAGER,
AXIS BANK LTD.,
RETAIL ASSET CENTRE (R.A.C.),
KASTURBA GANDHI MARG,
CONNAUGHT PLACE,
NEW DELHI-110001.

(Through: Mr. Ashawani Kumar, Advocate)

...Opposite Party No. 2

CORAM:

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

Present: Dr. R.S. Gupta, Complainant No. 2 (husband of Complainant No. 1)
in person.
None for the Opposite Parties No. 1 & 2.

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

JUDGMENT

1. The present Complaint has been filed before this Commission by the Complainant alleging deficiency in service and unfair trade practice on the part of Opposite Party and has prayed for the following reliefs:-

(i) to direct the Respondent no.1 / opposite party to hand over the physical possession of the aforesaid flat no. A-203 "GRAND SAVANA" 2nd Floor, Tower-A, complete in all respects to the complainants immediately and execute all necessary and required documents in respect of the said flat in favour of the complainants;

(ii) quash or set aside the illegal demands raised by the Respondent no.1/ opposite party dated 20.12.2012, 18.10.2013 and 09.11.2016 (before Mediation) and other charges;

(iii) direct the Respondent no.1 & 2 to pay the complainants the amount of interest paid by complainants Rs. 19,77,633=00 with interest @ 24 % per annum as 41 PRE-EMIs paid by complainants under different amounts and rest 47 EMIs @ 26,175=00 per month have been paid out of 152 EMIs by complainants pertaining to the loan amount of 22,00,000=00 vide A/c No. PH 1260100187345 existing in the joint names of the complainants from 01.11.2009 till date and pay the interest on Rs.4,55,000=00 with 24% compound interest, paid by complainants from respective dates which has been used by Respondent no. 1 till realization;

(iv) direct the Respondent No.1 to pay the amount of Rs. 18,00,000=00 with interest @24% per annum, as rent

amount paid by complainants for 90 months @ Rs.20000=00 per month from the date of execution of the Allotment Letter i.e. September, 2009 till date as the complainants have been residing under tenancy and the rent amount paid by complainants since the date of executing the Allotment Letter of the flat i.e. September 2009 till date;

(v) an order thereby directing the Respondent no.1 & 2 to pay Rs. 10,00,000=00 each to the complainants as special costs for the physical harassment, mental pain & agony caused by willful misconduct of the Respondent No.1& 2 for mental pain, agony as well as physical harassment suffered by the complainants, along with interest @24% per annum till its realization to the complainants;

vi) an order thereby directing the Respondents to pay Rs. 1,00,000/-to the complainants towards the legal expenses incurred by the complainants;

vii) any other order(s), relief(s) which this Hon'ble forum may deem fit and proper may kindly be passed in favour of the complainant and against the respondents, in the interest of justice.”

2. Brief facts necessary for the adjudication of the present Complaint are that the Complainants booked Apartment bearing No. 203, IInd Floor in Tower ‘A’ a residential project named “Grand Savana” measuring approx. 1550 sq. ft. being developed by the Opposite Party No. 1 (M/s. K.D.P. Infrastructure), located at NH-58, Raj Nagar Extension, Ghaziabad vide application dated 14.01.2009. The Apartment Buyer Agreement was executed between the Complainant and the Opposite Party No. 1 on 24.09.2009, with a clear understanding with regard to timely possession of the said Apartment within 36 months from the date of signing of the Apartment Buyer Agreement.
3. The Complainants till date have made a total payment amounting to Rs.54,21,210/- (including a loan amount of Rs. 49,85,000/- from the Opposite Party No. 2 for which the Complainant continues to pay EMIs to the Opposite Party No. 1) towards the sale consideration of the Apartment. Despite the

payment of a significant sum, when the Complainant visited the site to check the progress of the construction in April 2017, it was found that no significant construction work had been completed, the Opposite Party No. 1 failed to provide a satisfactory explanation for this delay. The Complainants sought clarification from the Opposite Party No. 1, and the officials of the Opposite Party No. 1 assured that possession would be provided shortly, there was no meaningful follow-up or progress and therefore the Complainant requested the Opposite Party No. 1 for the refund of the amount paid vide affidavit dated 08.04.2017. The Complainant had already made a payment of the substantial consideration of Rs.6,04,450/- to the Opposite Party No. 1 as the booking amount. The Complainant surrendered the right and possession of the Apartment in question to the Opposite Party No. 2 as the Complainant was constrained to stop the payment of the EMIs due to the non-completion of the construction of the Apartment. The Opposite Party No. 1 failed to refund the amount to either of the Complainant or the Opposite Party No. 2. Aggrieved by the aforesaid, the Complainant has approached this Commission.

4. The Opposite Party No. 1 has filed its Written Statement whereby denied all the contentions and allegations of the Complainant. It is submitted by the counsel for the Opposite Party No. 1 that the present Complaint is liable to be dismissed on the ground that this Commission does not have territorial or pecuniary jurisdiction to adjudicate the present case. Further, it is submitted that there has been no delay on the part of the Opposite Party No. 1, as it was the Complainant, who defaulted in making timely payments of installments. Moreover, it is submitted that the cancellation of the Apartment in question was done after due intimation of the default on the part of the Complainants. Pressing the aforesaid contention and submissions, the counsel for the Opposite Party No. 1 prayed for the dismissal of the present Complaint.
5. The Opposite Party No. 2 has filed its Written Statement whereby denied all the contentions and allegations of the Complainant. It is submitted by the counsel for the Opposite Party No. 2 that there is no cause of action arising out of the

Opposite Party No. 2 as a loan amount of Rs. 22,00,000/- (Rupees Twenty-Two Lakh Only) had been disbursed in favour of the Complainants. Pressing the aforesaid contention and submissions, the counsel for the Opposite Party No. 2 prayed for the dismissal of the present Complaint.

6. The Complainants have filed their Rejoinder rebutting the Written Statement filed by the Opposite Party No. 1. Thereafter, both parties filed their Evidence by way of Affidavit to prove their averments on record.
7. The Complainants have filed their Rejoinder rebutting the Written Statement filed by the Opposite Party No. 2. Thereafter, both parties filed their Evidence by way of Affidavit to prove their averments on record.
8. Written Arguments have been filed by the parties wherein the Complainant has relied on the following judgments in support of his case:-
 - a. *Consumer Case No. 79 of 2016* titled *Parveen Mangla vs. Puma Realtors Pvt. Ltd.* as decided on *08.07.2016*
 - b. *Consumer Case No. 80 of 2016* titled *Upvinder Singh Dhall and Anr. vs. Puma Realtors Pvt. Ltd. and Anr.*
 - c. *Consumer Case No. 82 of 2016* titled *Deepak Saluja and Anr. vs. Puma Realtors Pvt. Ltd. and Anr.*
 - d. *Consumer Case No. 521 of 2017* titled *District Karnal vs. DLF Homes Panchkula Pvt. Ltd.* as decided on *27.03.2018*
9. The Opposite Party No. 1 has failed to file the Written Arguments within the stipulated time period, and therefore, the right of the Opposite Party No. 1 to file the Written Arguments was closed vide order dated 29.10.2024.
10. Written Arguments have been filed by the Opposite Party No. 2 wherein the contents of the Written Statement have been reiterated and the same have been considered.
11. We have heard the counsel appeared on behalf of the parties and perused the material available on record.
12. The *first question* before us is *whether the present Complaint falls under the territorial jurisdiction of this Commission.*
13. To resolve this issue, we deem it appropriate to refer to Section 17(2) of the Consumer Protection Act, 1986 which provides as under:

“17. Jurisdiction of State Commission.-

(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,-

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.”

14. Analysis of Section 17(2) of the Consumer Protection Act, 1986 leads us to the conclusion that the extent of territorial jurisdiction of the State Commission to entertain cases where the Complainant or Opposite Party at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain or the cause of action arose.

15. Having discussed the statutory position, the facts of the present case reflect that the address of the office of the Opposite Party No. 1 is at **A-213, SHANTI GOPAL CHAMBERS, II FLOOR, VIKAS MARG, DELHI-110092.** Since the aforesaid address falls within the territory of Delhi, this Commission has the territorial jurisdiction to adjudicate the present Complaint.

16. The *next question* before us is *whether the present Complaint falls under the pecuniary jurisdiction of this Commission.*

17. To resolve this issue, we deem it appropriate to refer to Section 17(1)(a) of the Consumer Protection Act, 1986 which provides as under:

“17. Jurisdiction of State Commission.-

(1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed [exceeds rupees twenty lakhs but does not exceed rupees one crore]; and
(ii) appeals against the orders of any District Forum within the State;”

18. Analysis of Section 17(1) of the Consumer Protection Act, 1986 leads us to the conclusion that the extent of pecuniary jurisdiction of the State Commission to entertain cases where the value of goods or services or compensation claimed exceeds rupees twenty lakhs but does not exceed rupees one crore.

19. Having discussed the statutory position, the facts of the present case reflect that the total compensation claimed by the Complainant amounts to Rs. 48,77,633/- (Rupees Forty-Eight Lakh Seventy-Seven Thousand Six-Hundred and Thirty-Three Only). Since the aforementioned amount of compensation claimed exceeds rupees twenty lakhs but does not exceed rupees one crore, it is clear that this Commission has the pecuniary jurisdiction to adjudicate the present Complaint.

20. The *last question* for consideration before us is ***whether the Opposite Parties are deficient in providing its services to the Complainants.***

21. To deal with this issue, we deem it necessary to refer to the judgment of 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.

22. The above dicta 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.

23. Perusal of the record reflects that the Complainant entered into an Apartment Buyer Agreement with the Opposite Party No. 1 on 24.09.2009, and the Tripartite Agreement with the Opposite Party No. 1 and Opposite Party No. 2 on 25.09.2009. As per Article 11.5 of the Apartment Buyer Agreement (*annexed as Annexure-G on page no. 93 alongwith the Complaint*), the Opposite Party No.1 was obligated to handover the possession to the Complainant within 36 months from the date of execution of the Agreement. However, it is clear from the record, when the Complainant had visited the site of the project in 2017, the construction of the project was lagging much behind the stipulated time period as mentioned in the Apartment Buyer Agreement despite the Opposite Party No. 1 having received an amount of Rs. 40,62,346/- (Rupees Forty Lakh Sixty-Two Thousand Three-Hundred and Forty-Six Only), as is evident from the multiple payment receipts (*annexed as Annexure-C to Annexure-F on pages no. 64-77 alongwith the Complaint*).
24. On perusal of the record, while the date of handing over the possession of the Apartment as per the Apartment Buyer Agreement dated 24.09.2009 is 36 months, i.e. 24.09.2012, it is clear that the completion of the project schedule was overdue past the stipulated time period of handing over of possession as the proposed end date, and the same amounts to deficiency in service.
25. Relying on the above settled law and the relevant Article of the Apartment Buyer Agreement, we hold that the Opposite Party No. 1 is deficient in providing its services to the Complainant as the Opposite Party No.1 had failed to hand over the possession of the said Apartment in the stipulated time limit in the Apartment Buyer Agreement and kept the hard-earned money of the Complainant for an inordinate time.
26. Keeping in view the facts of the present case and the extensive law as discussed above, we direct the Opposite Party No. 1 to hand over the possession of the Apartment in question to the Complainants by **28.12.2025** (being 8 weeks from the date of the present judgement) refund the entire amount paid by the

Complainants i.e., **Rs. 40,62,346/-** (Rupees Forty Lakh Sixty-Two Thousand Three-Hundred and Forty-Six Only) paid towards interest and rent towards the Apartment in question along with simple 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 No. 1 till **28.10.2025** (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 Party No. 1 pays the entire amount on or before **28.12.2025**;
- C.** Being guided by the principles as discussed above, in case the Opposite Party No. 1 fails to refund the amount as per the aforesaid clause (A) on or before **28.12.2025**, 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 Party No. 1 till the actual realization of the amount.

27. 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. 2,00,000/-** (Rupees Two Lakhs only) as cost for mental agony and harassment to the Complainants;
- B.** The litigation cost to the extent of **Rs. 50,000/-** (Rupees Fifty Thousand only).

28. Applications pending, if any, stand disposed of in terms of the aforesaid judgement.

29. The judgment be uploaded forthwith on the website of the commission for

the perusal of the parties.

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

**(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT**

**(PINKI)
MEMBER (JUDICIAL)**

Pronounced On: **28.10.2025**

LR-DK