

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

Date of Institution: 10.11.2022

Date of hearing: 19.12.2024

Date of Decision: 26.03.2025

COMPLAINT CASE NO.- 191/2022

IN THE MATTER OF

**MS. MANPREET SHARMA,
W/O MR. MANU SHARMA,
E-7, NARAINA VIHAR,
NEW DELHI – 110028.**

**(Through: Mr. Divjot Singh
Bhatia & Mr. Shreesh
Chadha, Advocates)**

...Complainant

VERSUS

- 1. WTC NOIDA DEVELOPMENT CO. PVT. LTD.,**
- 2. VIRIDIAN RED,**
- 3. MRS. AKANKSHA,
PROJECT HEAD, WTC NOIDA.**

ALL AT:

**GF – 09, PLAZA M-6 JASOLA DISTRICT CENTRE,
NEW DELHI – 110025.**

(Through: Mr. Vijay Kr. Sharma, Advocate)

...Opposite Parties

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)****HON'BLE MR. J.P. AGRAWAL, MEMBER (GENERAL)**

Present: Mr. Aman Singh Bakshi and Mr. Shreesh Chadha,
counsel for the complainant (Enrl. No. D/4059/15,
E-mail: aman@kaaryalaw.com)
None for the OP

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

1. The present complaint has been filed by the Complainant before this commission alleging deficiency of service and unfair trade practice by the Opposite Parties and has prayed the following reliefs:
 - i. *Direct the Opposite Parties to refund the consideration of Rs. 82,27,052 (Rupees Eighty-Two Lakh Twenty -Seven Thousand and Fifty-Two only) along with 24% interest from the date of last payment i.e. 24.11.2014 till the date of realisation to the Complainant;*
 - ii. *Direct the Opposite Parties to release assured returns as per Developer Buyer Agreement dated 13th August 2014 amounting to Rs. 9,70,363/-(Rupees Nine Lakh Seventy Thousand Three Hundred and Sixty-Three only) at an interest rate of 24% per annum from March 2020 till date of realisation;*
 - iii. *Direct the Opposite Parties to pay Rs. 10,00,000/- (Rupees Ten Lakhs only) to the Complainant on account of harassment, mental agony and distress;*
 - iv. *Pass any further order(s) which this Hon'ble Commission may deem fit and proper in the interest of justice.*
2. Brief facts necessary for the adjudication of the present complaint are that on 07.01.2014, the Complainant booked a unit in the project World Trade Centre of the Opposite Parties situated at Greater Noida Industrial Development Area, District Gautam Budh Nagar, Uttar Pradesh, by paying a booking amount of Rs. 2,00,000/-. Thereafter, a Developer-Buyer Agreement was executed between the parties on 13.08.2014. The Complainant opted for a 100% down payment plan wherein the Opposite

Parties assured the Complainant to provide assured returns till the offer of possession of the said unit. Accordingly, the Complainant, over the period from January 2014 till November 2014, paid a total amount of Rs. 82,27,052/- to the Opposite Parties. Therefore, the Complainant had paid the entire basic sale price and the Opposite Parties agreed to pay assured returns to the Complainant. Further, as per Clause 5.6 of the said agreement, the Opposite Party was to complete the construction of the said unit within four years from the date of the said agreement plus a 6-month grace period. However, the Opposite Parties neither completed the construction of the said unit within the prescribed time nor offered possession of the said unit to the Complainant. More so, the Opposite Party informed the Complainant that the possession of the said unit would be handed over in February 2020.

3. Furthermore, the Complainant received an email dated 03.05.2020 from the Opposite Parties, informing them of the alteration of the conditions of the agreement regarding assured returns, allegedly on account of the Covid-19 pandemic, wherein the payment of assured returns would be suspended for the time being and readjusted in the future. Despite the Opposite Parties coming up with a revised mechanism for the payment of assured returns, they failed to adhere to the same. The Complainant again received an email dated 02.06.2020 from the Opposite Parties, intimating the Complainant that the revised terms of payment of assured returns stand applied to the Complainant. Thereafter, after repeated reminders and communication with the Opposite Parties, the Complainant addressed an email dated 16.06.2020 to the Opposite Parties, thereby recording the revised understanding of the payment of assured returns that had been agreed upon between the parties. As per the revised understanding, for the period of February 2020 till February 2022, the Opposite Parties would pay a sum of Rs. 37,500/- to the

Complainant, which is 50% of the payable assured returns and the remaining 50% was to be adjusted towards the dues of the Complainant. Moreover, the Opposite Parties would hand over possession of the said unit to the Complainant by February 2022 and in case the same was not complied with, the full assured returns of roughly Rs. 75,000/- would be paid by the Opposite Parties.

4. Furthermore, the Opposite Parties sent another email dated 07.09.2020 to the Complainant, explicitly agreeing to the revised terms in relation to assured returns, containing amended terms and conditions. However, the Opposite Parties failed to release assured returns regularly even after the revised understanding. The Complainant received assured returns of Rs. 39,023/- only for August, September, and October of 2024. More so, no assured returns were given to the Complainant apart from the above-mentioned assured returns by the Opposite Party since February 2020. Therefore, the Complainant made several communications regarding the possession of the said unit and assured returns, but the Opposite Parties failed to provide any satisfactory response to the Complainant. As a result, the Complainant sent a legal notice dated 25.08.2022, seeking the offer of possession and assured returns along with compensation from the Opposite Party, but it was of no avail.
5. The Opposite Parties have contested the present case and raised preliminary objections as to the maintainability of the complaint. The counsel for the Opposite Parties submitted that the Complainant is not a consumer under the Consumer Protection Act, 2019, as the Complainant invested the money to earn a profit, which amounts to a commercial purpose. He further submitted that the Complainant has no cause of action to file the present complaint. He also submitted that there is no unfair trade practice or deficiency in service on the part of the Opposite Parties, as the Complainant had entered into the agreement with the

Opposite Parties of their own free will and the parties agreed that in the event of a delay in the offer of possession beyond 13.02.2019, the allottees shall only be entitled to continue with the agreement till the date of the offer. Lastly, he submitted that the Opposite Parties cannot be held liable for not performing their obligations under the said agreement, as the same period was duly covered in the agreement under force majeure circumstances, i.e., the Covid-19 pandemic or lockdown. Pressing the aforesaid objections, the counsel appearing on behalf of the Opposite Parties submitted that the present complaint be dismissed.

6. The Complainant was directed to file a rejoinder but it is clear from the order dated 02.09.2024 that she does not want to file a rejoinder to the written statement filed on behalf of the Opposite Parties.
7. Both the parties have filed their Evidence by way of Affidavit in order to prove their averments on record.
8. The Complainant has filed its Written Arguments and relied upon the following judgments:
 - i. *Shrikant G. Mantri vs Punjab National Bank (2022)5SCC429-22*
 - ii. *Pioneer Urban Land and Infrastructure Ltd. vs. Govindan Raghavan and Ors. (2019)5SCC725*
 - iii. *Sindhu Mattoo vs. Pan Realtors Pvt. Ltd. FA/633/2021 (NCDRC, 2024)*
 - iv. *Manoj Kawatra & Anr. vs Pioneer Urban Land & infrastructure 2021 SCC OnLine NCDRC325*
 - v. *Ireo Grace Realtech Pvt. Ltd. vs. Abhishek Khanna (2021) 3 SCC 241*
 - vi. *M/S. Motia Developers Private Limited Vs. Priya Bose Chanda & Anr. FA 74/2021 (NCDRC, 2024)*

9. The Opposite Parties have filed written arguments and have raised preliminary objections as to the maintainability of the complaint case. The counsel of the Opposite Party reiterated the contentions made in the written statement.
10. We have perused the material available on record and heard the counsel for the Complainant.
11. **The first question for consideration before us is whether Complainant fall in the category of 'consumer' under the consumer protection act, 2019?**
12. To comment on this issue, we deem it appropriate to refer to Section 2(7) of the Consumer Protection Act, 2019, which provides as under:

“(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 service 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 service 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 service for any commercial purpose.”
13. The above statutory provision makes it clear that a person who buys goods or avail for a consideration which has been paid or promised or

partly paid and partly promised, or under any system of deferred payment is a consumer.

14. On perusal of record, it is evident from the Agreement dated 13.08.2015 (*Annexure – C/3*) that the Complainant had booked a unit with the Opposite Parties. The Opposite Parties had also taken consideration of Rs.82,27,052/- from the Complainant towards the aforesaid bookings is evident from the receipt issued by the Opposite Parties (*Annexure C/3*). Therefore, the Complainant falls under the category of ‘consumer’ provided by the Consumer Protection Act, 2019.
15. Further, the Opposite Parties submitted that the Complainant purchased the commercial unit for investment for purpose. However, the Hon’ble NCDRC, in a series of judgments, has held that the commercial use of a property depends on the facts and circumstances of each case, and that if the commercial use is for the purpose of earning a livelihood by means of self-employment, such a purchaser of goods would continue to be a consumer. A similar view was taken by the Hon’ble Supreme Court in *Civil Appeal No. 5858/2017, titled as Rohit Choudhary & Anr. vs. M/s Vipul Ltd., decided on 06.09.2023, and Civil Appeal No. 12322 of 2016, titled as Lilavati Kirtilal Mehta Medical Trust vs. Unique Shantu Developers & Co., decided on 14.11.2019.*
10. Furthermore, on perusal of the record before us, we fail to find any material that shows the Complainant is engaged in the business of purchasing and selling houses and/or plots on a regular basis, solely with a view to making a profit by the sale of such units. A mere allegation that the purchase of the property is for commercial purposes cannot be ground to reject the present consumer complaint.
11. The *second issue* to be adjudicated is *whether the present Complainant has cause of action to approach this commission under Consumer*

Protection Act' 2019. It is imperative to refer to Section 69 of the Consumer Protection Act, 2019 wherein it is provided as under: -

*“(1) The District Commission, 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 Commission, 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 District Commission or the State Commission or the National Commission, as the case may be, records its reasons for condoning such delay.”

12. Analysis of Section 69 of the Consumer Protection Act, 2019 leads us to the conclusion 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. In the present case neither possession of the unit in question has been delivered to the Complainant nor the Opposite Parties refund the total amount deposited by them. 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.”

13. Applying the above settled law, it is clear that failure to deliver possession being a continuous wrong it constitutes a recurrent cause of action and, therefore, so long as the possession is not delivered to the Complainant. The Complainant is within their right to file the present complaint before this commission.
16. The main question for consideration before us is *whether the Opposite Parties are deficient in providing its services to the Complainant.*
17. 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.”

18. At this stage, we deem it appropriate to refer to Article 5.6 of the Agreement dated 13.08.2014, wherein it is mentioned that:

“The Developer shall endeavor to offer possession of the Unit for fit outs within a period of four years from the date of this agreement and shall be entitled to grace period of 6 months after the expiry of four years...”

19. It reflects that the Opposite Parties were bound to offer possession of the said unit within a period of four months from the date of the Agreement, i.e., 13.08.2014, along with a grace period. However, the Opposite Parties failed to offer possession of the said unit to the Complainant within the stipulated period. Moreover, the time for offering possession of the said unit had already expired on 13.08.2018 and after adding the six-month grace period, the deadline for completing the construction expired on 13.02.2019, which was before the onset of the COVID-19 pandemic.
20. Furthermore, the Opposite Parties submitted that the terms and conditions were amended by them vide email dated 03.05.2020 and the same was duly accepted by the Complainant vide email dated 07.09.2020. However, the Opposite Parties have admitted that the construction of the said unit is still incomplete in paragraph 14 of the written statement, wherein it was mentioned that *the finishing work remains pending*. Additionally, the Opposite Parties failed to place any evidence or documents to demonstrate the extent of construction completed or the status of the occupation certificate for the building where the unit of the Complainant is located. Therefore, it is clear that the Opposite Parties are still not in a position to offer possession.

21. Moreover, it has been well settled that the Complainant cannot be expected to wait for an indefinite time period to get the benefits of the hard-earned money which they have spent in order to purchase the property in question (*Ref: Fortune Infrastructure v. Trevor D'Lima reported at (2018) 5 SCC 442*).
22. Additionally, it is evident from the record that the Complainant had opted for the '100% Down Payment Plan.' As per the said plan, the Opposite Parties were obligated to provide assured returns until the date of offer of the possession. However, on perusal of the record, it is noted that the Opposite Parties provided assured returns to the Complainant only until February 2020. Further, the Opposite Parties submitted that thereafter, the assured returns were discontinued due to the COVID-19 pandemic.
23. However, it is clear from the record that Opposite Party No. 2 vide email dated 03.05.2020, merely suspended the assured returns temporarily and assured the Complainant that they would be adjusted in the future. Furthermore, the Opposite Party No. 2, vide email dated 02.06.2020, informed the Complainant that the assured returns had been revised and that the revised terms would also apply to the Complainant. Consequently, the Opposite Parties continued to pay assured returns of Rs. 39,023/- for the months of August 2020, September 2020, and October 2020, even during the COVID-19 period. Therefore, the Complainant is entitled to assured returns until the date of offer of the possession. Consequently, the failure of the Opposite Parties to provide assured returns during the COVID-19 period was unjustified.
24. Consequently, we hold that the Opposite Parties are deficient in providing its services to the Complainant as the Opposite Parties had given false assurance to the Complainant with respect to the time for completing the construction of the said unit and failed to give assured returns to the Complainant as per revised plan.

25. 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 Complainant i.e., **Rs.82,27,052/-** 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 **26.03.2025** (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 **26.05.2025**;
 - 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 **26.05.2025**, 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.
26. In addition to the aforesaid and taking into consideration the facts of the present case, the Opposite Parties is directed to pay a sum of
- A. Rs. 9,70,363/- against the outstanding assured returns from March 2020 till the filing of the present complaint as per revised plan.
 - B. Rs. 3,00,000/- as cost for mental agony and harassment to the Complainant; and
 - C. The litigation cost to the extent of Rs. 50,000/-.
27. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

28. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
29. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(J.P. AGRAWAL)
MEMBER (GENERAL)

Pronounced On:

26.03.2025

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