

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-VI
(NEW DELHI), 'M' BLOCK, 1STFLOOR, VIKAS BHAWAN,
I.P.ESTATE, NEW DELHI-110002**

Case No.CC/305/2024

IN THE MATTER OF:

**Mrs. Sunita Goel
W/o Sh. Sunil Goel
R/o 2A, Ram Kishore Road
Civil Lines, Delhi-110054**

...Complainant

VERSUS

**TDI INFRACORP (INDIA) LIMITED
Through its Director(s)
Upper Ground Floor,
Vandana Building, 11 Tolstoy Marg
Connaught Place, Delhi-110001**

.....Opposite Party

Quorum:

**Ms. Poonam Chaudhry, President
Sh. Bariq Ahmad, Member
Sh. Shekhar Chandra, Member**

**Date of Institution: 22.08.2024
Date of Order:21.04.2025**

ORDER

BARIQ AHMAD<,MEMBER.

1. The present complaint has been filed under Section 35 read with 34 of Consumer Protection Act, 2019 (in short CP Act) against Opposite Party (in short OP) alleging deficiency of service.
2. Briefly stated the facts of the case are that the Opposite Party is a private limited company duly incorporated under the provisions of the

Companies Act, having its registered office at Upper Ground Floor, Vandana building, 11, Tolstoy Marg, Connaught Place, Delhi-110001 The Opposite Party is in the business of Development of real estate projects and represented itself as leading Real Estate Company in India..

3. It is further alleged that on 08.04.2013, Complainant booked a unit bearing No. WF-149/GF. GROUND AT GROUND FLOORS admeasuring 1400 Sq. ft. in the housing society of the Opposite Party namely "WATERSIDE FLOORS IN LAKE GROVE CITY" at Kundali, Sonipat, Haryana.
4. It is also alleged that on the request of the OP the Complainant made an advanced payment of Rs. 5,00,000/- (Rupees Five Lakhs) vide cheque dated 08.04.2013 in favor of the Opposite Party. The Opposite Party issued an Allotment Letter dated 15.10.2013.
5. It is further alleged that the Opposite Party entered into a Builder-Buyer Agreement, complainant opted for the "sub vention scheme" whereby the Complainant availed a loan of Rs.25.56.278/- (Rupees Twenty-Five Lakh Fifty-Six Thousand Two Hundred and 6 Seventy-Eight Only) from M/s India Infoline Housing Finance Limited (IFL) and the Opposite Party undertook to pay the interests towards the loan availed until the registry of the unit, on behalf of the complainant in accordance with the terms of the said Builder-Buyer Agreement.

6. It is also stated that, the Opposite Party, raised various Demand Letters requesting for payments towards the unit. Complainant made payment from 08.04.2013 onward, which are as under:

S.NO	DATE	Cheque no / Demand Draft No.	Amounts (in Rs.)	Drawn on
1	08.04.2013	(CH) 474626	5,00,000/-	South Indian Bank, Delhi
2	20.06.2013	(CH) 474628	7,16,500/-	South Indian Bank, Delhi
3	09.09.2013	(CH) 474638	7,05,000/-	South Indian Bank, Delhi
4	15.12.2013	(CH) 474639	1,99,640/-	South Indian Bank, Delhi
5	05.02.2014	(CH) 474640	6,08,231/-	South Indian Bank, Delhi
6	23.04.2014	(CH) 474642	5,11,425/-	South Indian Bank, Delhi
7	03.09.2015	(DD) 906452	12,21,300/ -	Standard Chartered Bank, Mumbai
8	11.07.2016	NA		NA
	Total	Rs.45,09,296/- (Rs. Forty Five Lakh Nine Thousand Two Hundred and Ninety Six)		

7. It is also stated that the Opposite Party failed to fulfill their part of obligation of making timely payments in relation to the interests towards IFL in furtherance of the terms and conditions agreed upon in the Builder-Buyer Agreement. Due to their failure to abide by the terms of the Builder-Buyer Agreement, the complainant was bound to pay the interests amounting to Rs.20,000/- per month towards IIFL from 05.09.2015 till date.

8. It is also alleged that there has been considerable delay in the construction of the unit. That opposite party failed to complete the housing project as agreed upon and thus failed to handover the possession of the unit booked by the Complainant within the stipulated time according to the Builder-Buyer Agreement. Moreover, the Opposite party on their own accord, expanded the size of the flat to 1520 Sq. Ft. and subsequently demanded an increased amount. The opposite party has siphoned off the monies received from the Complainant and adopted to unfair trade practice which is a deficiency in services.
9. It is alleged that the opposite party is liable to pay interest @ 18% per annum on the principle amount of Rs.45,09,296/- (Rupees Forty-Five Lakh Nine Thousand Two Hundred and Ninety-Six) for the period w.e.f. the date when the Complainant made payments to the Opposite party against the said flat, till its realization. The opposite party further liable to compensate the complainant by paying damages to the tune of Rs.20,00,000/- (Rupees Twenty Lakh only) for causing great mental trauma, harassment, monetary loss, trouble to the Complainant due to its gross and negligent services and unlawful conduct.
10. It is also alleged that aggrieved by the acts of OP the Complainant through her counsel sent a legal notice dated 13.03.2024 to the Opposite Party demanding refund of Rs. 45,09,296/- (Rupees Forty-Five Lakhs

Nine Thousand Two Hundred and Ninety-Six Only) along with 18% interest per annum. However, the Opposite Party neither replied nor returned amount paid by complainant. Hence, the present Complaint tracking report is annexed.

11. It is alleged that this Commission has territorial jurisdiction to entertain the present complaint as the registered address of the opposite party is situated within the territorial Jurisdiction of this Commission. This Commission has also pecuniary jurisdiction as the claim is Rs.45,09,296/- (Rupees Forty-Five Lakhs Nine Thousand Two Hundred and Ninety-Six Only), for the purpose of jurisdiction. It is also stated that the present complaint is not barred by the Law of Limitation.
12. It is also alleged that complainant has not filed any other similar consumer complaint case in relation to the subject matter of the present case before any other consumer court/forum/commission throughout India.
13. It is prayed that Opposite Party be directed to refund the consideration amount of Rs. 45,09,296/- (Rupees Forty-Five Lakhs Nine Thousand Two Hundred and Ninety-Six Only), to Complainant paid against unit bearing No. WF-149/GF, GROUND AT GROUND FLOORS admeasuring 1400 Sq. ft. in the housing society of the Opposite Party "WATERSIDE

FLOORS IN LAKE GROVE CITY" at Kundali, Sonipat, Haryana to the Complainant;

14. OP be also directed to pay interest @18% per annum on Rs. 45,09,296/- (Rupees Forty-Five Lakhs Nine Thousand Two Hundred and Ninety-Six Only) to the Complainant from the date when same was paid by the Complainant to the Opposite Party.
15. OP be also further directed to pay a sum of Rs.20,00,000/- (Rupees Twenty Lakh only) as compensation for damages on account of mental agony, harassment, financial losses caused to Complainant and deficiency in services, and Rs.10,000/- towards cost of litigation.
16. Any other order or relief which this Commission may deems fit and proper in the facts and circumstances of the case may kindly be passed in favour of the complainants and against the Opposite Party.
17. Notice of the complaint was issued to OP, pursuant to which OP appeared and filed written statement contesting the case on various grounds inter alia that the complaint seeking refund is not maintainable as it is devoid of merits.
18. It is further stated that opposite party has completed the project and has offered possession of the flat/ unit to the complainant vide letter dated 05.07.2023. As per the Final Statement pertaining of Flat in question the

outstanding balance payable by the complainant i.e. Rs.16,47,596/-.
(Annexure 2).

19. It is also stated that OP has obtained the Occupancy Certificate and had offered possession to its customers and about more than 380 customer have taken possession in the project in question. A copy of Occupancy Certificate issued by Director, Town and County Planning, Haryana for the Project is Annexure-3..
20. It is also alleged that the delay in construction, if any is due to the Force Majeure conditions, halt in construction activities on directions by the Hon'ble Nationa Green Tribunal in 2016-2017 and the Apex Court in November 2019 in view of the pollution caused during winter season. absence of labour due to COVID-19 Lockdown and later on blockage of roads due to Farmer's protest at National Highway-01, which were beyond the control of the Opposite Party. The Project of the OP is situated near the Singhu Border on NH-44, which comes under NCR. During the Farmers Protest (Kisan Andolan) NH-44 was totally blocked for 13 Months by the Farmers, adversely effected the construction activity of the project because construction material could not reach the site on time. All these circumstances were beyond the control of the OP and caused delay in completion of the project.

21. It is also stated that the Project is funded by Swamih Funds (SBI Cap) under the package given by Government of India to revive the Real Estate Sector in Lockdown and was also monitoring the progress of the project actively. Opposite party has completed the project.
22. It is also alleged that there is specific clause 28 in the Buyer's Agreement i.e, that in case the possession was delayed due to any reason in that case the OP are committed to pay compensation at the rate of Rs. 5/- per sq.ft. per month to the complainant during the period of delay. Thus the complainant has no case for refund..
23. It is also stated that the complaint is liable to be dismissed because the Complainant has wilfully with ulterior motives suppressed and concealed material facts.
24. It is also alleged that the Complainant is a prospective investor and as per the settled law a prospective investor who purchases the goods for trading cannot be a consumer within the meaning of the Act. It is also stated that complicated facts which relates to the agreed terms for which trial is necessary and which could not be tried before this forum.. It was also alleged that there has been no deficiency of service or negligence on the part of the Opposite Party, who denies all the allegations It is prayed that the complaint be dismissed..

25. The complainant thereafter filed rejoinder reiterating therein the averments made in the complaint and controverting all the allegation made in the written statement.
26. It is to be noted that in the rejoinder it was alleged that the floor buyers agreement was executed on 06.05.2014 between the complainant and opposite party and in accordance with the said agreement, the opposite party had to deliver the possession within a period of 30 months from the execution of the said agreement i.e. on or before 01.11.2016. The opposite party failed to handover the possession during the said period of 30 months. The force majeure events mentioned in the reply of the period beyond the specified period of 30 months as such, the plea of force majeure raised by the opposite party is unjustified. The invocation of force majeure events, including NGT orders, COVID-19 restrictions and the Farmer, Protest, are insufficient to justify prolonged delays. It is further submitted that force majeure can only be invoked when the unforeseeable event directly prevents performance, here the opposite party has failed to show a direct link between these cited events and the specific delay in delivering possession of the complainant's unit.
27. Parties filed evidence by affidavit reiterating therein the averments made in the complaint.
28. We have heard the Ld. Counsel for Parties and perused the evidence and material on record carefully.

29. Complainant relied upon the agreement receipts. The fact that complainant booked a flat in the project of OP is an admitted case as evident from the evidence of the parties. The complainant had relied upon the flat buyer agreement and receipt of payment Rs. 45,09,296/- (Rupees Forty-Five Lakhs Nine Thousand Two Hundred and Ninety-Six Only) The copies of receipt of the above amount issued by OP have been also filed by complainant. The receipts are not controverted by OP.
30. It was contended on the behalf of the complainant that OP was deficient in providing its services. It was also submitted that complainant had paid cost of the flat i.e. Rs. 45,09,296/- (Rupees Forty-Five Lakhs Nine Thousand Two Hundred and Ninety-Six Only) to the OP but OP failed to deliver the property even after 10 years of the agreement.
31. It was also argued that complainant had taken home loan of Rs. 31,96,976 (Thirty One Lakh Ninety Six Thousand Nine Hundred Seventy Six) from ICICI for payment of the property in question, the bank had disbursed the said amount of Rs. 31,96,976/- (Thirty One Lakh Ninety Six Thousand Nine Hundred Seventy Six) directly on 31.05.2022 to OP. It was also argued that according to clause 10 (a) of the Builder-Buyer Agreement, the construction was to be completed within 36 months from the date of commencement of project that is around May, 2011 but OP failed to hand over possession of the flat even till on the filing of the complaint. It was further submitted that the prolonged delay in construction and

handing over possession amounts to deficiency in service. It was also argued that the opposite party was under contractual obligation to construct the property within 36 months from the date of commencement of the project in May 2011, but it failed to do so. It was also stated that vide dated 10.06.2010 OP informed that the project was rescheduled and was to be completed by March 2012. However, OP failed to do so. It was also argued that the builder/OP thus failed to comply with the terms of clause 10(a) of the agreement. As regard deficiency in services, Hon'ble Supreme Court has held in **Arifur Rahman Khan and Ors. V. DLF Southern Homes Pvt. Ltd. And Ors. 2020(3) RCR Civil 544** that the failure of the developer to comply with the contractual obligation to provide the flat to a flat purchaser within the contractually stipulated time frame, amounts to deficiency.

32. It was also held in **Lucknow Development Authority Vs. M.K. Gupta, 2 1994(1) SCC 243** by Hon'ble Supreme Court that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for a consideration, it is a "service" as defined by Section 2 (o) of the Consumer Protection Act, 1986. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service. Person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with compensation.

33. On the other hand it was submitted on behalf of the OP that the complainant was informed vide letter dated 10.06.2010 about the delay in the project due global recession and rescheduling of the construction work. The complainant was further intimated that delay by way of penalty Clause 10(c) of the Flat Buyer Agreement was to be settled at the time of possession. It was also submitted that the OP vide letter dated 19.04.2012 informed the complainant about relocation of the flat from T7-401 to T14-403 to achieve early completion. It was also argued that the complainant has not been able to establish any deficiency of service or consumer dispute as contemplated under the Consumer Protection Act, 2019 which could be attributable to the Opposite Party, therefore, the Complaint is liable to be dismissed.
34. The contention of the OP was that the delay was due to force majeure, in this regard it is to be noted that no evidence was led by OP in support of the said contention that the delay was due to non-availability of the contractual labor or due to force majeure or compliance of any rules regulations, notification of Government authority.
35. After giving our careful thought to the arguments advanced by Ld. Counsels for parties, we are of the view that admittedly, there is inordinate delay in handing over the possession of the flat in question which amounts to deficiency in service.

36. It is to be noted Section 2 (47) of the Consumer Protection Act, 2019, defines ‘unfair trade practices’ in the following words: “unfair trade practice” means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice ...” and includes any of the practices enumerated therein. *The Hon’ble Supreme Court held in above case of Lucknow Development Authority Vs. M.k. Gupta, 1994(1) SCC 243, that when possession is not handed over within the stipulated period, the delay so caused is not only deficiency of service but also unfair trade practice.*
37. It is also pertinent to note Hon’ble Supreme Court also held **in Fortune Infrastructure and Anr. Vs. Trevor D’Lima and Ors.2018(5) SCC 442** *that a person cannot be made to wait indefinitely for possession of flat and they are entitled to seek refund of the amount paid by them along with compensation.*
38. Thus as the services of OP were deficient, the complainant was justified in claiming refund of the amount deposited by him with compensation.
39. We are further of the view that the cause of action being the continuing one as the amount advanced by complainants was not refunded neither possession of the flat was handed over to him, the complaint is within the period of limitation.

40. As regards the contention of OP that complainant is not a consumer, as defined in the Consumer Protection Act, 2019, it is to be noted that a mere allegation has been made in the WS by OP, in this regard no evidence was brought on record to prove the said contention. We are thus of the view that the same is without merits.

41. As regards the contention of OP that complaint is not maintainable, the complainant ought to have filed a civil suit as he is seeking recovery of money. In this regard to be noted that the remedy provided under the Consumer Protection Act are additional remedies apart from the other remedies including those provided by special statutes. The availability of alternative remedy is no bar in entertaining a complaint under the Consumer Protection Act as held by Hon'ble Supreme Court in Civil Appeal No. 3581-3590-20 M/s Imperia Structures Limited Vs. Anil Patni and Anr.

42. We thus, hold that OP was guilty of deficiency in services. We also find that Complainant was not at fault for the delay which occurred in the completion of project. We further hold that there are no reasons to justify the delay in completion of the project. We accordingly direct OP/TDI Infracorp (India) Ltd. to refund the amount Rs. 45,09,296/- (Rupees Forty-Five Lakhs Nine Thousand Two Hundred and Ninety-Six Only) to the complainant along with interest @ 9% p.a. from the date of deposit till realization within a period of 4 weeks from the date of receipt of order. In

case of delay in the payment beyond 4 weeks OP is directed to pay interest @ 12% p.a. for the delayed period. We also award Rs.50,000/- (Rupee Fifty Thousand Only) as cost on litigation.

A copy of this order be provided to all parties free of cost.

The order be uploaded on the website of this Commission.

File be consigned to record room along with a copy of the order.

(POONAM CHAUDHRY)
President

(BARIQ AHMAD)
Member

(SHEKHAR CHANDRA)
Member