

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

**Date of Institution: 30.11.2015**

**Date of reserving the order: 03.09.2024**

**Date of Decision: 26.05.2025**

**COMPLAINT CASE NO.-1195/2015**

**IN THE MATTER OF**

**1. SQN LDR PUSHPENDRA KUMAR**

S/O SH. KANWARPAL SINGH

R/O 371/4 CHAMBAL OFFICERS' COMPLEX,

AIR FORCE STATION MAHARAJPUR,

GWALIOR-474020

**(Through: Mr. Pawan Kumar &  
Mr. Prevendra Kumar, Advocates)**

...Complainant

**VERSUS**

**1. AIR FORCE NAVAL HOUSING BOARD**

(THROUGH ITS DIRECTOR)

AIR FORCE STATION, RACE COURSE,

NEW DELHI-110003

**(Mr. B.S. Nirola, Assistant Manager Legal)**

...Opposite Party No. 1

**2. M/S OMAXE INFRA & CONSTRUCTIONS LTD.**

(THROUGH PROJECT DIRECTOR MEERUT

AIR FORCE NAVAL HOUSING BOARD)

CORPORATE OFFICE:

1<sup>st</sup> FLOOR, BUILDING NO. 3 & 4,

LOCAL SHOPPING CENTRE,

NEAR KALKAJI, NEW DELHI-110019

**(deleted from array of parties  
vide order dated 20.12.2019)**

...Opposite Party No. 2

**CORAM:****HON'BLE MS. PINKI, MEMBER (JUDICIAL)****HON'BLE MS. BIMLA KUMARI, MEMBER (FEMALE)**

Present: Complainant in person

Mr. Bhupinder Kumar, AGM Legal for the Opposite Party  
No. 1.**PER: HON'BLE MS. BIMLA KUMARI, MEMBER (FEMALE)****JUDGMENT**

1. Brief facts of the case are that the Complainant is a commissioned officer of Indian Air Force and was posted at Air Force Station, Gwalior, Madhya Pradesh at the relevant time. In the year 2008-09, the Opposite Party No. 1 came up with an advertisement of construction of flats for Indian Air Force and Navy Officers at Shatabdi Nagar, Meerut, U.P., by which it was promised that the flat would be ready by mid 2012. Keeping in view that the Opposite Party No. 1 was a registered society and was formed for the welfare of the officers, the Complainant on 15.07.2009 applied for the allotment of flat in the aforesaid project of the Opposite Party No. 1 and paid a sum of Rs.1,01,000/- to the Opposite Party No. 1 towards registration charges. Vide Allotment Letter dated 13.10.2009, the Opposite Party No. 1 allotted one Type A-II flat, admeasuring 1300 sq. ft. @ basic sale price of Rs.21,75,000/- to the Complainant, in the aforesaid project. As per clause 17 of Allotment Letter, the Opposite Party No. 1 was supposed to complete the dwelling units by mid 2012 and if the project gets delayed due to unforeseen circumstances, beyond the control of Opposite Party, the Opposite Party will not pay any interest or compensation.

2. It is the case of Complainant that according to information provided on website of Opposite Party No. 1, the Opposite Party No. 1 entered into contract with Opposite Party No. 2 for construction of the flats. The Opposite Party No. 1 in connivance with Opposite Party No. 2 unilaterally increased the cost of flat from Rs.21,75,000/- to Rs.23,11,000/- on the pretext of increase in super area. Accordingly, the Complainant arranged the money by taking loan on market rates from various financial institutions for paying the instalments. Thereafter, the Opposite Party further increased the cost of flat by Rs.1,22,286/- on the pretext of "allottees suggestions." Vide letter dated 30.01.2014, the Opposite Party intimated the final cost of flat as Rs.29,54,982/-.
3. It is the further case of Complainant that since he was newly commissioned in Air Force and did not have adequate funds to pay instalments, he took loan from various agencies which attracted compound interest @ 10% approx., which drastically decreased the living standard of Complainant. He sincerely deposited the entire instalments as and when raised by Opposite Party No. 1. He was rarely unable to pay the instalment on one due date due to some constraints, for which the Opposite Party No. 1 levied penal interest. The Opposite Party in connivance with Opposite Party No. 2 kept the construction work lingering for years and kept on demanding money from him without doing their duties honestly. Till 18.07.2014, he had paid a sum of Rs.25,85,079/- and the parking charges, government taxes and maintenance charges remain to be paid. However, there is no hope that the Opposite Party No. 1 will deliver the possession of flat in near future.

4. It is the further case of Complainant that on 28.11.2014, the Opposite Party No. 1 on their website ([www.afnhb.org](http://www.afnhb.org)) published that "In the past few weeks, the progress on the site has suffered due to inadequate resources and inadequate man deployed by contractor. The contractor has been citing financial crunch." This information clearly pointed out that the Opposite Party No. 2 was deliberately delaying the project and the Opposite Party No. 1 was ignoring it for years. As and when, he tried to contact the Opposite Party No. 1, the officials of Opposite Party No. 1 stated that concerned officer was not available.
5. It is the further case of Complainant that since more than three years have been passed from the promised date of possession, but the Opposite Parties did not fulfil their promises and used the money of Complainant for their own purposes leaving the Complainant in lurch. The Complainant was bearing burden of loan and was also incurring rental loss of Rs.15,000/- per month w.e.f 01.07.2012. The Complainant issued legal notice dated 22.07.2015 upon the Opposite Parties. But, the Opposite Parties did not even reply to the same.
6. Thus, the Complainant was left with no other option but to file the present complaint, alleging deficiency in service and unfair trade practice on the part of the Opposite Parties. He has prayed for directions to Opposite Parties to handover the possession of flat in time bound manner and to pay penal interest @ 18% p.a. on the amount already paid by him from the promised date of possession i.e. July 2012 till realization. He also prayed for a sum of Rs.10,00,000/- towards

mental agony and harassment and a sum of Rs.20,000/- towards litigation charges.

7. Upon service, the Opposite Party No. 1 filed the written statement, wherein it was submitted that the Hon'ble Commission lacks pecuniary jurisdiction as the amount of compensation sought by Complainant does not exceeds Rs.20,00,000/-. The Complainant is not a 'Consumer' as defined under Section 2(d) of Consumer Protection Act, 1986 because the Opposite Party No. 1 did not render any services in lieu of sale consideration. The Opposite Party No. 1 is a welfare society registered under Societies Registration Act, 1860 with objective to provide houses to serving and retired Air Force and Naval personnel and widow of these two personnel on "no profit no loss basis." The Opposite Party No. 1 does not have any funds of its own and the total expenditure of project is collected from the allottees. Each and every penny spent in project was to be collected from allottees and if any additional amount is collected, it is returned to allottees. At the time of applying for scheme, the actual total cost of the project was not finalized and a tentative cost and area was intimated to the allottees. As per clause 3 & 4 of Allotment Letter, it was made clear to Complainant that area and cost of flat were tentative. Further, As per clause 17 of Allotment Letter, it was made clear to Complainant that no interest will be paid on instalments for any unforeseen circumstances. The layout plan of project was approved by Meerut Development Authority in January 2010, according to which the area of flat was increased from 1300 sq. ft. to 1450 sq. ft. and cost of flat was increased from Rs.21,75,000/- to Rs.23,11,000/-. This information was circulated to all allottees vide letter dated

03.09.2010. Since, there is an Arbitration clause no. 27 in Allotment Letter, the Complainant should have referred the dispute to Arbitrator. The Opposite Party No.1 denied rest of the allegations and prayed for dismissal of complaint.

8. The Complainant has filed rejoinder to the written statement of Opposite Party No. 1, wherein he denied the allegations of Opposite Party No. 1 and recapitulated the facts, narrated by him in his complaint.

9. **The Opposite Party No. 2 being not a necessary party was deleted from array of parties by Ld Predecessor vide order dated 20.12.2019.**

10. The Complainant has filed evidence by way of his affidavit.

11. The Opposite Party No. 1 has also filed evidence by way of affidavit of Mr. Istiyaq Ansari, Assistant Manager(E& M) of the Opposite Party.

12. The Complainant as well as the Opposite Party No. 1 have filed their respective written arguments.

13. We have heard arguments from Complainant as well as Ld counsel for Opposite Party No. 1. We have gone through the material on record.

14. Perusal of the record shows that during the pendency of proceedings, the Complainant moved an application seeking amendment in the prayer clause, vide which he prayed that the Opposite Party No. 1 be directed to refund the entire amount along with interest @ 18%, paid by him since 2009. During the course of arguments, Ld counsel for Complainant also submitted that the Complainant wants refund of his entire money

paid to Opposite Party No. 1 and is no longer interested in taking possession of flat.

15. First, of all, we would like to deal with the preliminary objections taken by the Opposite Party No. 1.

**“Whether this Commission has no pecuniary jurisdiction.”**

16. It is the case of Opposite Party No. 1 that the Hon’ble Commission lacks pecuniary jurisdiction as the total amount of compensation sought by Complainant is Rs.10,20,000/-, and does not exceeds Rs.20,00,000/-.

17. To deal with this contention, we would like to refer Section 17 of the Consumer Protection Act, 1986 which reads as under:

*“(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]**”*

18. Perusal of Section 17 of Consumer Protection Act, 1986 makes it clear that State Commission shall have jurisdiction to entertain a complaint where the value of goods or services and compensation claimed exceeds Rs. 20 Lakhs but does not exceeds Rs. 1 crore.

19. Returning to the facts of the present case, it is worth noting that as per Allotment Letter dated 13.10.2009, the tentative cost of the flat was Rs.21,75,000/- and the Complainant has prayed for compensation of Rs.10,00,000/- towards mental agony and harassment and Rs.20,000/- towards litigation costs. Further, as per Account Statement (**Ex CW1/2**), the Complainant had paid an amount of Rs.25,85,079/- from 28.08.2009 till 18.07.2014. Thus, the total value of claim exceeds

Rs.20,00,000/- but does not exceeds Rs.1 crore. In these facts and circumstances of case, we are of the considered view that this Commission has pecuniary jurisdiction to entertain this complaint and the above contention of the Opposite Party No. 1 is answered in negative.

**“Whether the Complaint is ‘Consumer’ or not.”**

20. It is the case of Opposite Party No. 1 that the Complainant is not a ‘Consumer’ as defined under Section 2(d) of Consumer Protection Act, 1986 because the Opposite Party No. 1 did not render any services in lieu of sale consideration and the Opposite Party No. 1 is a welfare society registered under Societies Registration Act, 1860 with an objective to provide houses to serving and retired Air Force and Naval personnel and widow of these two personnel on ‘no profit no loss’ basis.

21. To resolve this issue, we would like to refer to Section 2(1)(m) of the Consumer Protection Act, 1986, wherein it is provided as under:

*“Section 2(1)(m) “person” includes-*

*(i) a firm whether registered or not;*

*(ii) a Hindu undivided family;*

*(iii) a co-operative society;*

**(iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not;”**

22. Analysis of Section 2(1)(m) of the Consumer Protection Act, 1986 clearly reflects that the definition of the person includes a firm whether registered or not; or a Hindu undivided family; or a co-operative society and every other association of persons whether registered under the Societies Registration Act, 1860 or not. Therefore, though the Opposite

Party No. 1 in the present case is a society registered comes under the definition of 'person' as defined in the statutory provision of Consumer Provision Act, 1986.

23. Further, we would also like to refer to Section 2 (1) (d) of Consumer Protection Act, 1986:

*"Section 2(1)(d) 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 services 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 services 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 services for any commercial purpose]"*

24. Further, we would like to refer the dicta of of **Hon'ble Supreme Court in Narne Construction P. Ltd., etc Vs. Union of India and Ors. AIR 2012 SC 2369**, wherein it was inter-alia held as under:

*"when a person applies for the allotment of a building or site or for a flat constructed by the Development Authority and enters into an agreement with the Developer, or the Contractor, the nature of transaction is covered by the expression 'service' of any description. Housing*

*construction or building activity carried on by a private or statutory body constitutes 'service' within the ambit of Section 2(1)(o) of the Act and any deficiency or defect in such service would make it accountable before the competent consumer forum at the instance of consumers.."*

25. Further, in **Lucknow Development Authority Vs. M.K. Gupta (1994 1 SCC 243)**, it was held as under:

*"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(1)(o) of the Consumer Protection Act, 1986. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service."*

26. Analysis of Section 2(1)(d) of Consumer Protection Act, 1986 clearly describes that a person who hires or avails the service for a consideration is a 'Consumer.' In the present case, the Complainant hired the service of Opposite Party No. 1 and applied for a dwelling unit in the project of the Opposite Party No. 1 and paid an amount of Rs.25,85,079/- towards consideration to the Opposite Party which was providing its services to the Complainant. Thus, we are of the considered view that the Complainant is a 'Consumer' as prescribed under Section 2(1)(d) of the Consumer Protection Act, 1986 and complaint cannot be dismissed on this count also. Accordingly, the contention of the Opposite Party No. 1 is answered in negative.

**"Effect of Arbitration Clause in the Agreement."**

27. It is the case of Opposite Party No. 1 that in view of clause 27 of the Agreement, the Complainant should have referred the dispute to the Arbitrator.

28. To deal with this issue, we would like to refer to the judgment in **Emaar MGF Land Limited Vs. Aftab Singh** reported at **I (2019) CPJ 5 (SC)**, wherein the **Apex Court** has held as under:-

*“55. We may, however, hasten to add that in the event a person entitled to seek an additional special remedy provided under the statutes does not opt for the additional/special remedy and he is a party to an arbitration agreement, there is no inhibition in disputes being proceeded in arbitration. It is only the case where specific/special remedies are provided for and which are opted by an aggrieved person that judicial authority can refuse to relegate the parties to the arbitration.”*

29. The Hon'ble Apex Court has put to rest the controversy relating to the existence of arbitration clauses in the allotment letter/Buyers agreement etc. as is evident from the relevant paragraph 55 of 'Emaar MGF Land Limited' (supra). In the present case also, the Complainant has opted for the special remedies provided under the Consumer protection Act, 1986. Therefore, this Commission can refuse to relegate the present case to the arbitration. Hence, we are of the considered view that this Commission is authorized to adjudicate the case and the arbitration clause in the Buyers Agreement does not affect the jurisdiction of this Commission to entertain and adjudicate this matter.

30. **Now, the last question that arises for consideration is whether there was deficiency of service on the part of Opposite Party No. 1.**

31. To deal with this issue, we would like to refer Section 2 (1) (g) of Consumer Protection Act, 1986, which is reproduced herein for ready reference:-

*“(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.”*

32. Further, we would also like to refer the judgment in **Arifur Rahman Khan and Ors. vs. DLF Southern Homes Pvt. Ltd. and Ors.2020 (3) RCR (Civil) 544**, wherein it has been discussed as follows:

*“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) (0) 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 fulfillment of a contractual obligation.”

33. Returning to the facts of the present case, the Complainant had applied for allotment of flat in the upcoming project of the Opposite Party at Shatabdi Nagar, Meerut, U.P., as per Application Form **(Page 27 of complaint)**. Vide Allotment Letter dated 13.10.2009 **(Annexure-C2 Page 17 to 26 of complaint)**, the Opposite Party No. 1 allotted one Type A-II flat admeasuring 1300 sq. ft. at the basic sale price of Rs.21,75,000/- to the Complainant, in the aforesaid project. Further, as per clause 17 of Allotment Letter, the dwelling flats were to be completed by Opposite Party No. 1 by mid 2012. The Complainant has deposed on **28.11.2014**, the Opposite Party No. 1 published on its website that progress on the site suffered due to inadequate resources and inadequate manpower, which means that construction was not completed till November 2014.

34. The Complainant has further categorically deposed that the Opposite Party No. 1 unilaterally increased the cost of flat from Rs.21,75,000/- to Rs.29,54,982/- vide letter dated 30.01.2014 **(Annexure-C5 Page 36 of complaint)** and later on, it was increased upto Rs.34,52,329/- as per letter dated 21.08.2020 **(Ex CW 1/3)**. Since, he was a newly commissioned in Air Force and did not have adequate funds to pay instalments, he arranged the funds by paying compound interest @ 10% approx. from various agencies. But, there was no hope that the Opposite Party No. 1 would deliver the possession of flat in near future. As

and when, he tried to contact the Opposite Party No. 1, the officials of Opposite Party No. 1 stated that concerned officer was not available. Since, more than three years had been passed from the promised date of delivery of possession and he was bearing the burden of loan and was also incurring rental loss of Rs.15,000/- per month, he had issued legal notice dated 22.07.2015 upon the Opposite Parties. But, the Opposite Parties did not even reply to the same.

35. It is worth noting that the Complainant has already paid the substantial amount of Rs.25,85,079/- till 18.07.2014 i.e. more than the basic cost of the flat. It is further worth noting that the Opposite Party No. 1 has placed on record offer of possession letter dated 01.09.2020 (**Ex-OP1/14**) issued to the Complainant, which shows that Opposite Party No. 1 was not having completion certificate for the project at that time and only applied for the same, which itself shows that there was inordinate delay on the part of Opposite Party No. 1 in completion of the project in question. We are also of the view that offer of possession without completion certificate is not legal and valid in view of the judgment of **Hon'ble Supreme Court** in "**M/s Treaty Construction Vs. M/s Ruby Tower Housing Society**" reported in **AIR 2019 SC 3676**.

36. Further, we would like to refer to the judgment in **Fortune Infrastructure Vs. Trevor D'Lima** reported in **(2018) 5 SCC 442**, wherein the **Hon'ble National Commission** has held as follow:

*"a 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."*

37. **Since, the Opposite Party neither handed over the possession of the booked unit to the Complainant within reasonable period nor refunded his amount despite receiving legal notice dated 22.07.2015, we are of the considered view that there is deficiency in service on behalf of Opposite Party No. 1 and the Opposite Party No. 1 has no right to use or sit over the Complainant's hard-earned money, which he had spent for the purchase of the unit in question.**

38. Accordingly, the complaint filed by Complainants is allowed.

39. Consequently, we direct the Opposite Party No. 1 to refund the amount of **Rs.25,85,079/-** to the Complainant with the following arrangement:

40. An interest @ **6% p.a.** calculated from the date on which each payment/instalment was received by the Opposite Party No. 1 till **26.05.2025** (being the date of the present judgment);

A. 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 **26.07.2025**.

B. 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 **26.07.2025**, the entire amount is to be refunded along with an interest @ **9% p.a.** calculated from the date on which each payment/instalment was received

by the Opposite Party No. 1 till the actual realization of the amount.

41. In addition to the aforesaid and taking into consideration the facts of the present case, the Opposite Party No. 1 is directed to further pay a sum of:

**A. Rs. 1,00,000/-** as cost for mental agony and harassment to the Complainant; and

**B. The litigation cost to the extent of Rs. 50,000/-.**

42. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

43. 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.

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

**(PINKI)**  
**MEMBER (JUDICIAL)**

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

Pronounced on: **26.05.2025**