

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

*JUDGMENT RESERVED ON: 28.01.2021*  
*JUDGMENT PRONOUNCED ON: 09.03.2021*

**COMPLAINT NO. 373/2013**

**IN THE MATTER OF**

**MRS. GEETANJALI CHOPRA**

**MR. VIPIN KAPOOR**

**.....COMPLAINANTS**

**VERSUS**

**M/S SUPERTECH LTD.**

**.....OPPOSITE PARTY**

**CORAM:**

**HON'BLE DR. JUSTICE SANGITA DHINGRA SEHGAL**  
**(PRESIDENT)**

**HON'BLE SH. ANIL SRIVASTAVA, (MEMBER)**

Present: Mr. Rajneesh Srivastava, Counsel for Complainants.  
Mr. Piyush Aggarwal, Counsel for the Opposite Party.

**PER: HON'BLE DR. JUSTICE SANGITA DHINGRA SEHGAL,**  
**PRESIDENT**

**JUDGMENT**

**[Via Video Conferencing]**

1. The present complaint has been filed before this commission under Section 17 of the Consumer Protection Act, 1986 alleging deficiency of services and unfair trade practices by the opposite party, wherein the complainants have prayed as under:

*a) Direct the opposite party to withdraw their illegal demand for interest of Rs. 4,51,988/- which was further reduced to a conditional amount of Rs. 2,10,000/- and also to*

*withdraw the illegal demand against maintenance and security etc which are already paid.*

- b) Direct the opposite party to execute Conveyance Deed/ Lease Deed in favour of the complainants on payment of reasonable charges of registration of the deed by the complainants and*
- c) Direct the opposite party to deliver peaceful possession of the Flat No. 401, Type 2 B/R, Tower-CAESAR-2,3rd Floor, Greater Noida to the Complainants .*
- d) Direct the opposite party to pay interest @18 % on Rs 34,44,945/- (Rupees Thirty Four Lacs Forty Four Thousand Nine Hundred and Forty Five only) on account of delay in possession of the residential flat/unit since 04.08.2007, when the entire payment was received by them, till the date of execution of conveyance deed or delivery of possession of flat.*
- e) Any other relief which this Hon'ble State commission deems just and proper in the circumstances of the case may be granted.*

2. Brief facts necessary for the adjudication of the present complaint are that an apartment bearing Unit No. 401 Type 2 B/R, Tower- CAESAR-2, on 3rd floor, admeasuring 1295.00 sq. ft. in "SUPERTECH CZAR SUITS" located at Plot No. GH-02, Sector-Omicron-1, Greater Noida, Uttar Pradesh was allotted to the complainants i.e. Mrs. Geetanjali Chopra & Mr. Vipin Kapoor vide Allotment letter dated 15.05.2007. The possession of the said flat was assured by the Opposite party in two phases, i.e. Phase I and Phase II in December, 2008 and December 2009 respectively. It is pertinent to mention that the complainants booked the flat in phase I being in urgent need of a flat.
3. The total sale consideration for the apartment was mutually agreed between the contesting parties, fixed at Rs. 34,44,945/- inclusive of the basic sale price, preferential location charges, car parking, maintenance security, electricity installation charges and lease rent.

As per the payment plan, the complainants were to pay the amount as per the following table:-

| <b>Amount Due</b> | <b>Due Date</b> | <b>Amount Paid On</b> |
|-------------------|-----------------|-----------------------|
| Rs. 2,00,000/-    | 30.11.2006      | 30.11.2006            |
| Rs. 2,99,260/-    | 08.12.2006      | 08.12.2006            |
| Rs. 17,482/-      | 08.02.2007      | 08.02.2007            |
| Rs. 29,28,203/-   | 09.02.2007      | 04.08.2007            |

4. The complainants paid the first three installments as provided above amounting to Rs. 5,16,742/- by 08.02.2007 and the rest was to be paid at the time of handing over possession, as per the version of the complainants. Thereafter, the complainants approached M/S UTI Bank Ltd. (presently Known as Axis Bank Ltd.) for taking loan to honour the demand of the Opposite Party. On 15.05.2007, the Opposite Party issued a letter to the bank granting “**Permission to Mortgage**” to the complainants for the aforesaid residential flat. Hence, a Tripartite agreement dated 27.07.2007 was entered into between the Complainants, the Opposite party and the bank wherein the bank had sanctioned a loan amount of Rs. 14,00,000/- in favour of the complainants.
5. The entire sale consideration i.e. Rs. 34,44,945/- was paid by the complainants to the Opposite party by 04.08.2007. However, when the date for handing over the physical possession arrived, the Opposite Party gave evasive replies and the complainant was informed that the flat will be handed over soon.
6. The complainants obtained a No Objection Certificate from the Bank, on account of closure of the Home Loan account on 25.06.2012. The complainants received the loan file from the bank wherein they discovered that a demand letter dated 11.01.2007 was issued by the

Opposite Party directly to the bank from which the complainants have obtained the loan, demanding an amount of Rs. 29,45,685/-, instead of addressing it to the complainants, which was placed on the loan file of the bank.

7. On 03.01.2013, the Opposite Party offered the possession of the flat to the complainants and demanded an outstanding amount of Rs. 5,72,004/- which included interest on delayed payments amounting to Rs. 4,58,186/-, along with power back up charges amounting to Rs. 61,854/- and other charges. On 28.01.2013, this amount was further revised by the Opposite party and reduced to Rs. 5,03,952/- after deducting the power back up charges.
8. After due deliberations, on 04.02.2013, the opposite party reduced the rate of interest payable for delayed payments made by the complainants from 36% p.a. to 18% p.a. provided that the complainants gave an undertaking that no demand for compensation for delay in delivery of possession would be demanded by the complainants.
9. Being aggrieved by the acts of the Opposite Party, the complainants served a letter dated 24.01.2013 upon the Opposite Party, which was of no avail. Subsequently, the Complainants got served a legal notice dated 04.03.2013 upon the Opposite Party requiring them to waive off the late payment interest, execute the Conveyance deed/lease deed and deliver the possession of the flat. However, till date no reply to the said legal notice has been filed by the Opposite Party.
10. Furthermore, till date, possession of the plot has not been handed over by the Opposite Party, even though the complainants were entitled to get the possession of the aforesaid plot by December, 2007.

11. Alleging deficiency of services and unfair trade practice on the part of the Opposite Party, the complainants have approached this commission.
12. During the course of the proceedings, notice was issued to the Opposite Party on 21.11.2013, the counsel for the Opposite Party appeared on 07.08.2014 and the copy of complaint was supplied to him. Subsequent to the acceptance of the copy of the complaint, the Opposite Party filed its written statement.
13. In its written statement, the Opposite Party has contended that the complainants have filed the present complaint case in order to avoid heavy court fees whereas in fact, the proper forum should be a civil court, since the case requires elaborate evidence; that the parties are bound by the contract and since the contract carries an arbitration clause, the present complaint should be referred to an arbitrator only; that time was not the essence of the contract and that there exists no deficiency of service on part of the Opposite Party.
14. Thereafter, the parties filed their evidence by way of affidavit to prove their averments on record and their written arguments.
15. We have heard the counsel for the complainants as well as the counsel for the Opposite Party and perused through the material on record. Before delving into the merits of the case, we deem it appropriate to adjudicate preliminary issues which have been raised on behalf of the Opposite Party.
  - **WHETHER THIS COMMISSION HAS JURISDICTION TO ADJUDICATE THE PRESENT COMPLAINT?**
16. The first question for consideration relates to the jurisdiction of this commission to try the present suit. The counsel for the Opposite Party has contended that the complainant, in order to avoid heavy court fees,

which they would otherwise have to pay if they approach the Civil Court, have brought the present complaint case and as the issue relates to recovery of money, this commission does not have the jurisdiction to adjudicate the present consumer complaint.

17. The jurisdiction of consumer commissions to entertain cases of this nature has been settled via array of judgments. We tend to rely on the dicta of ***Hon'ble Supreme Court in Narne Construction P. Ltd., etc. v. Union Of India and Ors.*** Etc., reported at (2012) 5 SCC 359 :-

*5. In the context of the housing construction and building activities carried on by a private or statutory body and whether such activity tantamounts to service within the meaning of clause (o) of Section 2(1) of the Act, the Court observed: (LDA case [(1994) 1 SCC 243] , SCC pp. 256-57, para 6)*

*“6. ... As pointed out earlier the entire purpose of widening the definition is to include in it not only day-to-day buying and selling activity undertaken by a common man but even such activities which are otherwise not commercial in nature yet they partake of a character in which some benefit is conferred on the consumer. Construction of a house or flat is for the benefit of person for whom it is constructed. He may do it himself or hire services of a builder or contractor. The latter being for consideration is service as defined in the Act. Similarly when a statutory authority develops land or allots a site or constructs a house for the benefit of common man it is as much service as by a builder or contractor. The one is contractual service and the other statutory service. If the service is defective or it is not what was represented then it would be unfair trade practice as defined in the Act. Any defect in construction activity would be denial of comfort and service to a consumer. When possession of property is not delivered within stipulated period the delay so*

*caused is denial of service. Such disputes or claims are not in respect of immovable property as argued but deficiency in rendering of service of particular standard, quality or grade. Such deficiencies or omissions are defined in sub-clause (1)(ii) of clause (r) of Section 2(1) as unfair trade practice. If a builder of a house uses substandard material in construction of a building or makes false or misleading representation about the condition of the house then it is denial of the facility or benefit of which a consumer is entitled to claim value under the Act. When the contractor or builder undertakes to erect a house or flat then it is inherent in it that he shall perform his obligation as agreed to. A flat with a leaking roof, or cracking wall or substandard floor is denial of service. Similarly when a statutory authority undertakes to develop land and frame housing scheme, it, while performing statutory duty renders service to the society in general and individual in particular.”*  
(emphasis supplied)

**6. This Court in LDA case [(1994) 1 SCC 243] further held that when a person applies for allotment of building site or for a flat constructed by the development authority and enters into an agreement with the developer or a contractor, the nature of the transaction is covered by the expression “service” of any description. The housing construction or building activity carried on by a private or statutory body was, therefore, held to be “service” within the meaning of clause (o) of Section 2(1) of the Act as it stood prior to the inclusion of the expression “housing construction” in the definition of “service” by Ordinance No. 24 of 1993.”**

18. Relying upon the settled law in this context, we are of the opinion that this commission has the jurisdiction to entertain the cases where the builder has defaulted in delivering timely possession of the flats to the

complainants. Consequently, the said contention of the opposite party is answered in the negative.

• **WHETHER THE COMPLAINT IS MAINTAINABLE AS PER THE ARBITRATION CLAUSE OF THE PLOT ALLOTTEE AGREEMENT?**

19. The next issue for consideration before us is whether the complaint is maintainable as per the Arbitration clause in the Allotment letter entered into and duly executed between the Complainants and the Opposite Party.
20. On the point of the existing arbitration clause, we deem it appropriate to refer to *Emaar MGF Land Limited vs. Aftab Singh* reported at (2019) 12 SCC 751, wherein the Hon'ble Supreme Court held as under:

*“5. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that **complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application.** There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed*



above.”

21. Hence, the issue as to whether the Consumer Commission can entertain complaints given that there is an arbitration clause in the agreement entered into between the parties is no more res integra and the contention of the Opposite Party is not in consonance with the dicta of the Hon’ble Apex Court.

• **TIMELY DELIVERY IS THE ESSENCE OF A BUILDER-BUYER CONTRACT**

22. The counsel for the Opposite Party has contended that as per the agreement dated 15.05.2007, time was not the essence of the contract and there is no stipulation in the agreement that the possession will be provided within a particular time period.

23. The Hon’ble National Commission in the case of ***DLF Homes Panchkula Pvt. Ltd. and Ors. D.S. Dhanda and Ors.*** reported at ***I(2019) CPJ 218 NC*** which has been upheld by the Hon’ble Supreme Court in ***DLF Homes Panchkula Pvt. Ltd. v. D S Dhanda, Etc.*** reported at ***2019 SCC OnLine SC 689*** has held as under:-

*“41. The clear sum and substance and import of "---- endeavors to complete construction of the Said Independent Floor within a period of twenty four (24) months from the date of execution of the Agreement----" in clause 11(a) read in conjunction with "---- compensation @ Rs. 10/- per sq.ft. of the Saleable Area of the said Independent Floor per month for the period of such delay beyond twenty four months----" in clause 15 as evident to a reasonable man of normal intelligence is that the builder co. would complete construction and hand over possession of the unit within a period of 24 months from the date of execution of the agreement, and, in case there is some short reasonable delay in offering possession, the builder co. would pay compensation for such short reasonable delay @ Rs.*

10/- per sq. ft. of the saleable area of the independent floor per month.

That in clause 11(a) the words "subject to all just exceptions" or "endeavours to complete" etc. etc. have been used or that other terms and conditions (albeit 'ifs and buts') have been built into clause 11(a) to (c), and/or clause 14, and/or clause 15, and/or other clauses, does not in any manner take away the import of the proposition intended to be conveyed and understood. And the compensation for delay provided for in clause 15 (Rs. 10 per sq.ft. p.m.) cannot be for an unreasonably protracted period or indefinite; at best it can be for a short period that would appear to be reasonable per se and would be acceptable as such to a reasonable man." The contention forwarded by the builder co. that the various terms and conditions of clause 11(a) to (c), clause 14 and clause 15, read together, imply that delay could for any period beyond 24 months, short or protracted, reasonable or otherwise, and the (self-evidently meagre) compensation for delay provided for in clause 15 could be paid indefinitely for any period above 24 months is misconceived and erroneous. As already stated, the clear import and intent of "---endeavors to complete construction of the Said Independent Floor within a period of twenty four (24) months from the date of execution of the Agreement----" in clause 11(a) read with the compensation of "- - - @ Rs. 10/- per sq.ft. of the Saleable Area of the said Independent Floor per month for the period of such delay beyond twenty four months----" provided for in clause 15 is that the construction would be completed and the possession handed over not later than 24 months of the execution of the agreement and that for a short reasonable delay beyond 24 months a (somewhat token) compensation would be paid.

**To say that the possession can be delayed indefinitely or unreasonably and a token compensation for delay can be paid indefinitely or for an unreasonably protracted period is misconceived and erroneous. Indefinite or unreasonable delay with token compensation for delay cannot continue ad nauseam, ad infinitum (such situation would be absurd). The**

**builder co.'s contention that 'time is not the essence of the contract' is misconceived and erroneous."**

24. The complainants 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).**
25. Even though the allotment letter is silent as to till which date the possession has to be handed over, however, the law has been well settled that in case the allotment letter does not mention a specific time period, the plot is to be handed over within a reasonable time. What constitutes reasonable time has been discussed by the Hon'ble National Commission in ***First Appeal No. 348 of 2016*** titled ***Ajay Enterprises Pvt. Ltd. and Ors. vs. Shobha Arora and Ors.*** dated ***10.05.2019*** wherein it has been 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."*

26. Returning to the facts of the present case, the fact that the complainants had been allotted a flat vide allotment letter dated 15.05.2007 with the Opposite Party and made a payment to the extent of Rs. 34,44,945/- by 04.08.2007 is well established from the evidence on record. However, the letter of possession was only issued vide letter dated 03.01.2013. Relying on the above settled law, we are of the view that the Opposite Party had given false assurance to the complainant with respect to the time for delivery of possession of the apartment and kept the hard earned money of the complainant for about 6 years.

27. At the most, as per the dicta of the Hon'ble National Commission in *Ajay Enterprises (Supra)* and given the fact that the allotment letter was issued on 15.05.2007, the Opposite Party was duty bound to handover the possession by December, 2010, however, till date the Opposite Party has failed to handover the possession of the said flat to the complainant, thus the **Opposite Party is deficient in providing its services to the Complainants.**

• **UNFAIR TRADE PRACTICE**

28. The next question which arises is whether the Opposite Party has indulged in unfair trade practices.

29. Clause 2(1)(r) of the Consumer Protection Act, 1986 defines —unfair trade practice as follows :-

*—2(1)(r) —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 including any of the following practices, namely:- ... ..*

*(emphasis supplied)*

30. The Opposite party had raised a demand of Rs. 4,51,988/- from the complainants vide their letter dated 03.01.2013 on account of penal interest on delayed payments, however, the said letter was never sent to the complainants and was sent to the bank directly, from which the complainants had taken a loan.
31. The payment plan as per the Allotment letter reflects that the outstanding amount was due on 09.02.2007 and it is abundantly clear that the complainants paid the entire sale consideration i.e. Rs. 34,44,495 as on 04.08.2007 i.e. after a delay of 6 months.
32. However, there exists a contradiction on part of the Opposite party. A perusal of letter dated 03.01.2013 by the Opposite party reflects that the outstanding amount of Rs. 29,28,203.00/- was payable only at the time of offering of the possession. An offer for possession was only issued vide letter dated 03.01.2013 i.e. after a delay of 6 years from the date on which the complainants had already paid the entire sale consideration, hence, it cannot be said that it was the complainants who are at fault whereas in fact, it is the Opposite Party who have failed to abide by the terms of the allotment letter as well as the law as discussed above. Hence, there exists no question of demanding interest on delayed payments since the entire sale consideration was paid before possession was offered.
33. Therefore, we are of the view that the demand for penal interest amounting to Rs. 4,51,988/- towards delay in making payment is unjust and illegal and the Opposite Party is not entitled to claim the same.
34. Having discussed the liability of the Opposite Party, the only question left to adjudicate is as to how the complainants are to be compensated for the deficient acts of the Opposite Party and also for the Unfair

Trader Practices. It is imperative to refer to the recent pronouncement of the Hon'ble Supreme Court in terms of "*Interest*" which is being allowed on the refunded amount. In *Arifur Rahman Khan and Ors. (supra)* which is the latest pronouncement (24.08.2020) on the cause, the Hon'ble Apex Court has allowed an interest @ 6% p.a. on the amount received by the Opposite Party, payable within one month and in case of default to pay within the stipulated period, an interest @ 9% p.a. was payable on the said amount.

35. Keeping in view the principles as discussed above, we allow the following reliefs as prayed for by the complainant:

I. The demand of the penal interest amounting to Rs. 4,51,988/- which was reduced to Rs. 2,10,000/- is hereby declared void and the complainant is not bound to pay the same, in terms of the reasoning given in paras 31-32 of the present judgment;

II. We direct the Opposite Party to pay compensation for the delay in handing over the possession as per the following arrangement:

- a. An interest @ **4% p.a.** calculated from **01.01.2011** (being the date on which the Opposite Party was required to hand over the possession to complainant, as per the reasoning in para 27 of the present judgment) till **.03.2021** (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 OP pays the entire amount on or before **31.05.2021**;
- c. Being guided by the principles as discussed above, in case the Opposite Party fails to pay the amount as per the aforesaid clause (A) on or before **31.05.2021**, the

Opposite Party will be liable to pay an interest @ **6% p.a.** calculated from **01.01.2011** (being the date on which the Opposite Party was required to hand over the possession to complainant, as per the reasoning in para 27 of the present judgment) till the actual realization of the amount;

- III. Subject to the complainants depositing the statutory amount payable for the sale/conveyance deed as per the provisions of the relevant law, the Opposite Party shall get the sale/conveyance deed executed in favour of the Complainants for the flat in question, within **Two Months** from the date of the present judgment and the possession shall be handed over on the same date, failing which, the Opposite Party shall be liable to pay an amount of Rs. 5000/- (Rupees Five Thousand Only) to the complainant for each day of delay, till the sale/Conveyance Deed is actually executed in favour of the complainants;
- IV. In addition to the aforesaid and taking into consideration the facts of the present case, the Opposite Party is directed to 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/-.

36. Applications pending, if any, stands disposed of in terms of the aforesaid judgment.
37. 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.

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

**(DR. JUSTICE SANGITA DHINGRA SEHGAL)**  
**PRESIDENT**

**(ANIL SRIVASTAVA)**  
**MEMBER**

Pronounced On:  
**09.03.2021**

