IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 27.03.2017

Date of hearing: 02.09.2026

Date of Decision: 28.10.2026

COMPLAINT CASE NO.- 591/2017

IN THE MATTER OF

1. **MR. S.C. GUPTA,**
   S/O LATE MR. R.G. GUPTA,
2. **MRS. SUNITA GUPTA,**
   W/O MR. S.C. GUPTA
   BOTH AT:
   R/O B-4/228, SAFDARJUNG ENCLAVE,
   NEW DELHI.

(Through: Sunita Chola & Associates)

…Complainants

VERSUS

GRANITE HILLS PROPERTIES PVT. LTD.,
SIKKA HOUSE', C-60, PREET VIHAR
MAIN VIKAS MARG, DELHI-110092.

(Through: Mr. Sudeep Kumar Shrotriya, Advocate)

…Opposite Party

CORAM:

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

Present: Ms. Sunita Chola, Counsel for the Complainant appeared through VC.
Mr. Prakhar Singh, Counsel for the OP.

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

JUDGMENT

1. The present complaint has been filed by the Complainants before this Commission alleging deficiency of service and unfair trade practice by the Opposite Party and has prayed the following:

    i. *Allot and handover the possession of Shops bearing No. 2430 & 2431 on 24th Floor of their project "Kapital Grand" at Plot No. C-01 B, Sector 98, Noida Expressway, Noida, Uttar Pradesh, India to the complainants;*
    ii. *Pay compensation to the tune of Rs. 5,00,000/- to the Complainants for the losses suffered by him due to mental agony torture, harassment & also for Legal proceedings suffered by the complainant due to the negligence of the respondent Company.*
    iii. *Pay interest @2% per month on the said amount from the date of filing till the date of payment of the said amount.*
    iv. *Pay the costs of the present case.*
    Such other and further orders) which this Hon'ble Court deems fit and proper may also be passed in favour of the complainant and against the respondents in the facts and circumstances of the present case.

2. The brief facts necessary for the adjudication of the present complaint are that the Complainants vide tentative application form dated 03.08.2014, applied for booking of two shops bearing Nos. 2430 and

2431 on the 24th Floor in the project namely "Sikka Kapital Grand" of the Opposite Party, situated at Plot No. C-01B, Sector 98, Noida, Uttar Pradesh. The total consideration of Shop No. 2430 was Rs. 21,35,500/- and that of Shop No. 2431 was Rs. 21,43,000/-. Subsequently, the Complainants made another payment of Rs. 1,10,000/- and Rs. 1,10,750/- respectively. The Complainants have alleged that the payment plan in the tentative application form was blank and no payment plan was agreed upon between the parties. The Opposite Part, instead of forwarding the allotment letter/buyer agreement to the Complainants, persistently demanded payment in accordance with a payment plan to which the Complainants had never agreed. Thereafter, the Opposite Party sent allotment agreements for the aforesaid shops, which the Complainants returned on 02.01.2015 after making certain changes in the terms and conditions, including a stipulation that the balance payment would be made after delivery of possession. The Opposite Party neither returned the agreements after signing them nor raised any objection to the changes made by them. However, the Complainants shocked to receive letters dated 11.03.2015 and 31.03.2015, wherein the Opposite Party terminated their bookings on the ground that they had failed to make payments in accordance with the Construction Linked Payment Plan. The Complainants disputed the said termination, maintaining that no such payment plan had been agreed upon between the parties. The Complainants also replied to the termination letters vide letter dated 04.04.2015 and expressed their willingness to pay the balance consideration within three days of being handed over possession of the shops. The Complainants also issued a legal notice dated 11.06.2015, which was replied to by the Opposite Party vide letter dated 29.06.2015, reiterating its stand regarding

termination of the bookings but the Opposite Party failed to give any satisfactory response. Aggrieved by the termination of their bookings and the failure of the Opposite Party to allot the shops and hand over possession, the Complainants have filed the present complaint, alleging deficiency in service on the part of the Opposite Party.

3. The Opposite Party has contested the present complaint and raised preliminary objections to its maintainability. The counsel for the Opposite Party contended that the Complainants are not 'consumers' within the meaning of the Consumer Protection Act, 1986, as the shops were booked for commercial purposes and investment. He further submitted the Complainants failed to disclose cause of action arose in favour of the Complainant and against the Opposite Party. The Opposite Party has also raised objection with respect to the territorial jurisdiction of this Commission on the ground that the project is situated in Noida, Uttar Pradesh.

4. The counsel for the Opposite Party has submitted that the Complainants opted for the Construction Linked Payment Plan and were required to pay Rs. 2,17,787/- for Shop No. 2430 and Rs. 2,18,565/- for Shop No. 2431 towards the booking amount but the Complainants paid only Rs. 1,00,000/- each. He also submitted that, in their subsequent correspondence, the Complainants sought time to make further payments and represented that the remaining amount would be arranged through bank finance. The Opposite Party has also stated that the Complainants stopped payment of the cheques issued towards further payment and later sought to make the balance payment only after possession. Moreover, the Complainants made unilateral changes to the allotment agreements, which were not accepted and no agreement was executed. Despite reminders and a final opportunity to clear the

outstanding dues, the Complainants failed to make the requisite payments. Therefore, the Opposite Party rightly terminated the bookings of the Complainant on 31.03.2015. Pressing aforesaid objections, the Opposite Party prayed for dismissal of the present complaint with cost.

5. The Complainants have filed Rejoinder rebutting the written statement filed by the Opposite Party. Both the parties have duly filed their Evidence by way of Affidavit in order to prove their averments on record.

6. The Complainants have filed their written arguments and reiterated the averments made in the present complaint.

7. The Opposite Party has filed its written arguments and reiterated the submissions made in its written statement.

8. We have perused the material available on record and heard the counsel for both the parties.

9. The ***first question*** for consideration before us is ***whether the Complainants fall under the category of 'consumer' defined under the Consumer Protection Act, 1986***. To comment on this issue, we deem it appropriate to refer to ***Section 2(1)(d)*** of the Consumer Protection Act, 1986, which provides as under:

> *(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 8[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 2[but does not include a person who avails of such services for any commercial purpose].*

10. The above statutory provision makes it clear that a person who buys goods or avail services 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. It is admitted fact that the Complainants have made payment of Rs.1,00,000/- each towards the aforesaid shop.
11. In view of the aforesaid, it is clear that the Complainants had bought said shops from the Opposite Party by paying part-consideration and therefore, the Complainants falls under the category of 'consumer' provided by the Consumer Protection Act, 1986.
12. Moreover, 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.***
13. Furthermore, on perusal of the record before us, we fail to find any material that shows the Complainants are 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 shop. A mere allegation that the purchase of the property is for commercial purposes cannot be ground to reject the present consumer complaint.

14. The second issue to be adjudicated is ***whether the Complainants have cause of action to approach this commission***. It is imperative to refer to Section 24A of the Consumer Protection Act, 1986 wherein it is provided as under: -

> "***24A. Limitation period.*** -
> *(1) The District Forum, 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 Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint as this such period:*
> *Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay."*

15. Analysis of Section 24A of the Consumer Protection Act, 1986 leads us to the conclusion that this commission is empowered to admit a complaint if it is filed within a period of two years from the date on which cause of action has arisen. We further deem it appropriate to refer to ***Mehnga Singh Khera and Ors. Vs. Unitech Ltd.*** 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.* ***It is only when the seller virtually refused to give possession, that the period of limitation prescribed under section 24(A) of the Consumer Protection Act, 1986 would start. The Complainant has to file a case within two years from the date of refusal of delivery of possession to the buyer.****"*

16. Returning to the facts of the present case, it is noted that the Opposite Party had duly sent the cancellation letter dated 31.03.2015 to the Complainants informing about the cancellation of the both shop and the Complainants have filed the present complaint on 27.03.2017 i.e., within 2 years from the date of cancellation. As a result, the Complainants are within their right to file the present complaint before this commission.

17. The next question for consideration is ***whether this commission has territorial jurisdiction?***

18. The question for consideration is whether this commission has the territorial jurisdiction to adjudicate the present complaint. We deem it appropriate to refer to Section 17(2) of the Consumer Protect Act, 1986 which provides as under:

> *"(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction-*
>
> *(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or*
>
> *(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain,*

as the case may be, acquiesce in such institution; or
(c) the cause of action, wholly or in part, arises."

19. Analysis of Section 17 (2) of the Consumer Protection Act, 1986 leads us to the conclusion that this commission shall have the territorial jurisdiction where Opposite Party at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain or the cause of action arose.

20. Having discussed the statutory position, the facts of the present case reflect that the registered office of the Opposite Party is at Sikka House, C-60, Preet Vihar, Main Vikas Marg Delhi- 110092. Since the registered office falls within the territory of Delhi, this commission has the territorial jurisdiction to adjudicate the case.

21. To strength the aforesaid findings, we tend to rely on ***Rohit Srivastava v. Paramount Villas Pvt. Ltd.*** reported at ***2017 SCC OnLine NCDRC 1198***, wherein it has been held as under:

"*It is not in dispute that the Registered Office of Opposite Party No. 1 Company is situated in Delhi, i.e., within the territorial jurisdiction of the State Commission at Delhi and therefore, in the light of clear provision contained in Section 17(2)(a), which stipulates that a Complaint can be instituted in a State Commission, within the limits of whose jurisdiction, the Opposite Party actually carries on business. <u>In view of the said provision, we have no hesitation in coming to the conclusion that since the Registered Office of the first Opposite Party is situated in Delhi, the State Commission did have the territorial jurisdiction to entertain the Complaint</u>."*

22. Relying on the above settled law, we are of the view that this commission has the territorial jurisdiction to decide the present complaint.

23. The last question for adjudication before us is ***whether the Opposite Party is deficient in providing services to the Complainants by cancelling and terminating booking of the Complainants.***

24. The expression deficiency of services is defined in Section 2 (1) (g) of the Consumer Protection 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."*

25. The expression 'service' in Section 2(1)(o) of the Consumer Protection Act, 1986 is defined as:

> *"(o)"service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service"*

26. On perusal of the record, it is noted that the Complainants vide application form dated 03.08.2014, applied for booking of Shop Nos. 2430 and 2431 in the project, "Sikka Kapital Grand" of the Opposite Party. The total consideration of the two shops, i.e., Rs. 21,35,500/- and Rs. 21,43,000/-, respectively, is not disputed by the parties. It is also evident from the record that the Complainants initially paid Rs. 1,00,000/- each towards booking.

27. The Complainants further alleged that they paid Rs. 1,10,000/- and Rs. 1,10,750/- towards the respective shops vide cheques bearing Nos. 036289 and 036290, both dated 10.08.2014. The Opposite Party has denied receipt of these amounts. However, the termination letters dated

31.03.2015, issued in respect of both shops, acknowledge the aforesaid payments in paragraph 3, while stating that the amounts were insufficient to clear the outstanding dues. Accordingly, it is clear that the Complainants paid a total of Rs. 2,10,000/- towards Shop No. 2430 and Rs. 2,10,750/- towards Shop No. 2431.

28. The Opposite Party has consistently submitted that the Complainants had opted for the Construction Linked Payment Plan. However, we fail to find any document on record establishing that the Complainants had opted for or accepted the said payment plan. The correspondence relied upon by the Opposite Party also does not establish which payment plan had been agreed upon between the parties. On the contrary, the Complainants in their letter dated 01.09.2014 had stated that they had not received any payment plan. In the absence of any document establishing their acceptance of the Construction Linked Payment Plan, the Opposite Party could not have proceeded on the assumption that the said plan was applicable to the Complainants and raised demands accordingly. Therefore, the subsequent termination of the bookings of the Complainants by the Opposite Party on the ground of non-payment under the said plan is not justified.

29. It is further noted that the Opposite Party sent allotment agreements to the Complainants for execution. The Complainants returned the agreements after making certain changes to the terms and conditions. Instead of addressing the changes proposed by the Complainants and clarifying the terms of payment, the Opposite Party continued to issue demand letters. We also fail to find any material on record to show that the Opposite Party took steps to resolve the differences regarding the terms of the allotment agreements or to establish the payment plan agreed upon between the parties before terminating the bookings.

30. In view of the above, we are of the view that the Opposite Party has failed to establish that the Complainants had agreed to the Construction Linked Payment Plan. Accordingly, the cancellation of the bookings on the basis of the said payment plan was not justified and amounts to deficiency in service.

31. Now, we have to decide whether refund can be awarded in the present case as the Complainants had prayed for possession of the said units. On this point, we deem it appropriate to refer to ***Parsvnath Exotica Resident Association Vs Parsvnath Developers Ltd. & Ors.*** reported in ***IV (2016) CPJ 328 (NC)***, wherein the ***Hon'ble National Commission*** has held as under:-

> *"Though, in Consumer Complaint No. 45 of 2015, the main prayer made by the complainant is to direct delivery of the possession of the flats to the allottees complete in all respects, coupled with execution of the file deed in their favour, when this matter came up for hearing on 27.4.2016, the learned Counsel for the complainant stated on instructions, that since the building plans for construction of towers No. A-D have already lapsed and the revised plans have not been sanctioned as yet, the said allottees are not interested in waiting any longer for delivery of the possession of the flats and want to take refund, along with appropriate compensation for the financial loss suffered as well as the harassment and mental agony caused to them. The learned Counsel for the opposite party submitted in this regard that no prayer for refund has been made in Consumer Complaint No. 45 of 2015.* ***In our opinion, even in the absence of any specific prayer, it is always open to this Commission to grant a relief which is justified and warranted in the facts and circumstances of the case****."*

32. Relying on the above settled law, it is clear that this commission, even in absence of specific prayer, can grant a relief which is justified and warranted in the facts and circumstances of the case. Returning to the facts of the present case, it appears that the Opposite Party is not in a

position to handover the units in question to the Complainants. Therefore, as per the facts and circumstances of the present case, we are of the view that it is justified to refund the amount already paid by the Complainants.

33. Keeping in view the facts of the present case and the extensive law as discussed above, we direct the Opposite Party to refund the entire amount paid by the Complainants i.e., ***Rs. 4,20,750/-*** 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 Party till **28.10.2026** (being the date of the present judgment);

    B. The rate of interest payable as per the aforesaid clause **(A)** is subject to the condition that the Opposite Party pays the entire amount on or before **28.12.2026**;

    C. Being guided by the principles as discussed above, in case the Opposite Party fails to refund the amount as per the aforesaid clause **(A)** on or before **28.12.2026**, the entire amount is to be refunded along with an interest **@ 9% p.a.** calculated from the date on which each installment/payment was received by the Opposite Party till the actual realization of the amount.

34. 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 Complainants; and

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

35. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
36. 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 https://e-jagriti.gov.in for perusal of the parties.
37. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:

28.10.2026

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