IN THE DELHI STATE CONSUMER DISPUTES

REDRESSAL COMMISSION

Date of Institution: 19.02.2019

Date of hearing: 15.09.2026

Date of Decision: 15.09.2026

COMPLAINT CASE NO: - 177/19

IN THE MATTER OF:

MR. SUNIL KUMAR MALKANI,

R/O 2, LEONARD ROAD, N-9,

9 SR, LONDON.

(Through: Mr. JC Vashishta, Advocate)

…Complainant

VERSUS

M/S OMAXE LTD.

7, LOCAL SHOPPING CENTRE

KALKAJI, NEW DELHI – 110019.

(Through: Mr. Mukti Bodh, Advocate)

…Opposite Party

CORAM:
HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'ABLE MS. BIMLA KUMARI, MEMBER (FEMALE)

Present: Dr. J.C. Vashist, Mr. Madan Lal, Ms. Ruchi and Mr. Pratim, counsel for the complainant.
Mr. Mukt Bodh, counsel for the OP on VC.

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

JUDGMENT

1. The present Complaint has been returned by the District Commission vide order dated 11.01.2019 on the ground of lack of pecuniary jurisdiction, filed by the Complainant before this commission alleging deficiency of service and has prayed the following reliefs:

   a) *direct the opposite to accept balance of consideration amount of the flat bearing flat bearing No. 404 in TULIP TOWER in their project "OMAXE NORTH AVENUE-II BAHADURGARH" in 20 equal interest free quarterly installments/ construction linked payment;*
   b) *alternatively the opposite party may be directed to refund the amount of Rs.5,52,838/- paid by the complainant to the opposite party. The opposite party may also be directed to pay an interest @ 24% per annum on the amount paid by the complainant from the date of booking of the aforesaid flat;*
   c) *To issue necessary directions to OP to compensate the complainant for his harassment, mental agony and sufferings to the tune of Rs. 4.00 Lakhs;*
   d) *To direct the opposite party to pay cost of present complaint to the complainant;*
   e) *To pass any other or further orders/ directions which this Hon'ble Forum may deem fit and proper in the light of facts and circumstances enumerated hereinabove in the interest of justice, fairness and equity.*

2. Brief facts necessary for the adjudication of the present complaint are that the Complainant, vide application dated 12.11.2007, booked a residential apartment in the project namely *"Omaxe North Avenue-II,*

Bahadurgarh" of the Opposite Party, situated in the revenue estate of Village Sankhol and Bahadurgarh, District Jhajjar, Haryana. The Complainant vide cheque bearing No. 022982 dated 12.11.2007 paid a booking amount of Rs. 2,71,250/- towards the said apartment. Thereafter, the Complainant paid another amount of Rs. 2,96,670/- to the Opposite Party with respect to the aforesaid booking. Subsequently, the Opposite Party vide letter dated 01.10.2008, allotted a three-bedroom apartment bearing No. 1003 on the 10th floor of Express Tower, admeasuring approximately 1650 sq. ft., to the Complainant. The Opposite Party assured the Complainant that possession of the said apartment would be handed over by the end of the year 2009. However, the Opposite Party failed to commence any construction work at the site for about 14 months. Moreover, the Opposite Party, without any prior consent or approval of the Complainant, arbitrarily changed the pattern of apartments in the project under the guise of constructing low-rise apartments and shifted the Complainant from Apartment No. 1003, Express Tower, 10th floor to another apartment bearing Unit No. 404 on the 4th floor of Tulip Tower. Since the Opposite Party had neither sought nor obtained the consent, approval or permission of the Complainant for such change, the Complainant was dissatisfied with the said action and lodged a complaint with the Opposite Party. However, the Opposite Party reiterated its stand and intimated the Complainant that it would construct an apartment having similar specifications and facilities as those agreed for the aforesaid apartment in the low-rise building in the said project.

3. The Opposite Party also forwarded an Allotment Letter-cum-Agreement, arbitrarily allotting another apartment bearing No. 404 in Tulip Tower of the same project, whereas, during the elapsed period of approximately 40 months, no construction work had been commenced. Thereafter, the Opposite Party, vide its letter dated 15.10.2010, submitted a payment

schedule for the remaining amount on the basis of a construction-linked payment plan, without taking the Complainant into confidence. In order to ascertain the ground reality, the Complainant visited the site and found that the Opposite Party had failed to commence construction of the project till September 2012. The Complainant thereafter made several communications with the Opposite Party regarding the commencement of construction of the project and the expected date of handing over possession of the apartment. However, the Opposite Party merely gave false assurances regarding the same.

4. Furthermore, the Opposite Party continued to raise demands in accordance with the payment schedule. However, the Complainant did not comply with the said demands, as the Opposite Party had failed to fulfil its contractual obligations. The Complainant also suffered considerable business losses due to the global recession in the market and, consequently, could not remit the requisite amount to the Opposite Party. Subsequently, when the Opposite Party commenced construction of the aforesaid project in January/February 2013, Mr. Harish Motihar, a nephew of the Complainant, took certain photographs of the construction work being carried out at the project site. Thereafter, the Complainant approached the Opposite Party and offered to make the payments as demanded by it. However, the Opposite Party bluntly refused to accept the payment, stating that it had already forfeited the amount of Rs. 5,52,838/- paid by the Complainant. Thus, the Complainant approached this Commission alleging deficiency in service on the part of the Opposite Party.

5. The Opposite Party has contested the present complaint and raised preliminary objections with respect to the maintainability of the present complaint. The Counsel for the Opposite Party submitted that the Complainant does not fall within the definition of a "Consumer" under

the Consumer Protection Act, 1986. He further submitted that there was no cause of action in favour of the Complainant to file the present complaint. He also submitted that the present complaint involves complex questions of facts and law which require detailed evidence, examination and cross-examination of witnesses and, therefore, the same cannot be adjudicated in a summary procedure before this Commission.

6. The counsel for the Opposite Party further submitted that the Complainant had failed to adhere to the agreed payment plan and did not make the requisite payments despite repeated demands and reminders. The Opposite Party issued letters/reminders dated 18.04.2012, 03.05.2012, 23.05.2012, 01.06.2012, 19.06.2012, 07.07.2012 and 20.07.2012, calling upon the Complainant to clear the outstanding dues. The Opposite Party also issued final notices dated 07.07.2012 and 20.07.2012, whereby the Complainant was informed that failure to make the due payments would result in cancellation of the allotment and forfeiture of the amount deposited. However, despite the aforesaid letters and reminders, the Complainant failed to make the requisite payments. Consequently, the Opposite Party cancelled the allotment vide letter dated 21.08.2012 and forfeited the booking amount in terms of Clauses 5 and 6 of the Basic Terms and Conditions forming part of the Application Form. Pressing the aforesaid submissions, the Opposite Party prayed for dismissal of the present complaint with cost.
7. The Complainant has filed the Rejoinder rebutting the written statement filed by the Opposite Party. Both the parties have filed their Evidence by way of Affidavit in order to prove their averments on record.
8. The Complainant has filed the written arguments and reiterated the allegation made in the present compliant. He further relied upon the following judgments:

a. *Diwan Ashwani & 7 Ors. vs. Unitech Reliable Projects Ltd., Consumer Case No. 282/2012, decided on 07.05.2015, by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi.*
b. *Puneet Malhotra vs. Parsvnath Developers Ltd., Consumer Complaint No. 232/14, decided on 29.01.2015, along with Nitin Bhatia & Anr. vs. Parsvnath Developers Ltd., Consumer Complaint No. 233/14, and Consumer Complaint No. 293/14, by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi.*
c. *Common Order dated 08.06.2015 passed by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi, in 30 complaints bearing No. 427/14, 428/14, 429/14, 430/14, 431/14, 432/14, 433/14, 434/14, 435/14, 436/14, 437/14, 438/14, 439/14, 440/14, 441/14, 442/14, 443/14, 453/14, 454/14, 455/14, 456/14, 464/14, 465/14, 466/14, 467/14, 468/14, 474/14, 475/14, 490/14 and 502/14.*
d. *Bijay Madan vs. Unitech Ltd. & Anr., Consumer Case No. 505/2014, decided on 01.10.2015, by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi.*

9. The Opposite Party has failed to file its written arguments despite multiple opportunities.
10. We have perused the material available on record.
11. The first question for consideration is ***whether Complainant fall in the category of 'consumer' under the consumer protection act, 1986?***
12. The Opposite Party contended that the Complainant is not *Consumer* as defined under the Consumer Protection Act, 1986 as he invested the money to earn profit, which amounts to commercial purpose. To resolve this issue, we deem it appropriate to refer to ***Aashish Oberai Vs Emaar MGF Land Limited*** reported in ***I (2017) CPJ 17(NC)*** wherein it is held as under:

> *"6. .....A person* ***cannot be said to have purchased a house for a commercial purpose only by proving that he owns or had purchased more than one houses or plots****. In a given case,* ***separate houses may be purchased by a person for the individual use of his family members****. A person owning a house in a city A may also purchase a house in city B for the purpose of staying in that house during short visits to that city. A person may buy two or three houses if the requirement of his family cannot be met in one house. Therefore, it would not be correct to say that in every case where a person owns more than one house, the acquisition of the house is for a commercial purpose.*"

13. It is imperative to refer to the dicta of the Hon'ble National Commission in ***CC-1122/2018*** titled ***Narinder Kumar Bairwal and Ors. vs. Ramprastha Promoters and Developers Pvt. Ltd. and Ors.*** decided on ***01.11.2019***, wherein, the Hon'ble National Commission has held as under:

> *"19. The contention of the Learned Counsel that the said Flats were purchased for commercial purpose is not supported by any documentary evidence as the onus shifts to the Opposite Parties to establish that the Complainant have purchased the same to indulge in 'purchase and sale of flats' as was held by this Commission in Kavit Ahuja vs. Shipra Estates I (2016) CPJ 31. The Opposite Parties failed to discharge their onus and we hence hold that the Complainant are 'Consumers' as defined under Section 2(1)(d) of the Act."*

14. From the aforesaid dicta of the Hon'ble National Commission, it flows that it is for the Opposite Party to prove that the apartment purchased was for commercial purpose, by way of some documentary proof and a mere bald statement is not sufficient to raise adverse inference against the Complainant.

15. In the present case, the Opposite Party has merely made a statement that the Complainant purchased the apartment for commercial purpose and on perusal of the record before us, we fail to find any material which

shows that the Complainant is engaged in the business of purchasing and selling houses and/or plots on a regular basis, solely with a view to make profit by sale of such flats. Mere allegation, that the purchase of the property is for commercial purpose, cannot be the ground to reject the present consumer complaint. Consequently, the objection raised on behalf of the Opposite Party is answered in the negative.

16. As regards the contention of the counsel for the Opposite Party that the Complainant is not a 'consumer' as he is a British citizen and had purchased the apartment in question for investment purposes, the same is not tenable. In ***Amita Shahi v. Emaar MGF Land Ltd., decided by the Hon'ble National Commission on 11.02.2026,*** it was held that the Complainant was a 'consumer' and was not an investor merely on the ground that she was a British citizen and had purchased the property. Therefore, the said contention of the Opposite Parties is also rejected.

17. The second question for consideration before us is ***whether the Complainant has any cause of action to approach this commission?***

18. To deal with this issue, 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."

19. 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. In the present case, the Opposite Party cancelled the allotment of the Complainant on 21.08.2012 and the Complainant has filed the present complaint in the year 2013 before District Commission. Therefore, it is clear that the Complainant has filed the present complaint within 2 years form the date of cancellation i.e., the last cause of action. Thus, the Complainant is within their right to file the present complaint before this commission.

20. The next question for consideration before us is ***whether the present complaint involves complicated questions of facts and law, which should be decided by the civil court?***

21. The Opposite Party contended that the complicated question of facts and law which have been raised in the present complaint can only be decided before the Civil Court.

22. The Consumer Protection Act, 1986, came into being in order to protect the interests of *Consumers* who are affected by the acts of the service providers, who in order to attract the Consumers, tend to make lucrative offers but when it comes to actually providing the offered services, they take a step back.

23. Deficiency has been defined under section 2 sub-clause (g) which reads as follows:

"(2) (g)"deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;"

24. Returning to the facts of the present complaint, the perusal of the record shows that the Complainant avail the services of the Opposite Party for a consideration. However, the Opposite Party failed to hand over the possession of the said apartment or refund of the deposited amount to the Complainant, aggrieved by which, the Complainant has sought the refund of the amount paid by him. Hence, the Complainant is entitled to file the present complaint before this commission since the Complainant is aggrieved by the deficient services of the Opposite Party i.e., the failure of the Opposite Party to handover the possession of the said apartment within reasonable time and it is only due to this reason, that the refund of the amount paid is sought from the Opposite Party, which this Commission is authorised to adjudicate.

25. Our view is further fortified by the dicta of Hon'ble Supreme Court in ***Narne Construction P. Ltd., etc. v. Union Of India and Ors. Etc.***, reported at ***AIR 2012 SC 2369***, wherein it was held that 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.

26. Moreover, nothing cogent has been brought on record by the Opposite Party which would reflect that there are such complicated questions involved which could not be settled on the basis of the pleadings filed on behalf of the contesting parties. Consequently, we are of the view that the present complaint falls within the four corners of the jurisdiction of this commission and there is no bar with respect to the jurisdiction of this

commission to entertain cases related to the possession or refund of amount deposited with the Opposite Party.

27. The main question for consideration before us is ***whether the Opposite Party is deficient in providing its services to the Complainant?***

28. To resolve this issue, we deem it proper to reproduce section 2(1)(g) of the Consumer Protection Act, 1986 as under:

> *"(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;"*

29. We also reproduce section 2(1)(o) of the Consumer Protection Act, 1986 as under:

> *"(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;"*

30. The above provisions reflect that where a service provider undertakes to perform certain obligations under a contract, it is bound to provide such services in the manner agreed between the parties. Any fault, shortcoming, imperfection or failure in the performance of such obligations amounts to deficiency in service within the meaning of the Consumer Protection Act, 1986.

31. On perusal of record, it is noted that the Complainant vide application form dated 12.11.2007, booked a residential apartment in the project of the Opposite Party. The Complainant paid a total amount of

Rs.5,52,838/- towards the said booking. Thereafter, the Opposite Party vide allotment letter dated 01.10.2008, allotted Apartment No. 1003 on the 10th floor of Express Tower to the Complainant. However, the Opposite Party vide letter dated 02.08.2010 changed the allotment of the Complainant from Apartment No. 1003 on the 10th floor of Express Tower to Apartment No. 404 on the 4th floor of Tulip Tower, without obtaining the prior consent or approval of the Complainant. The Opposite Party changed the aforesaid allotment almost after 2 years from the first allotment. Therefore, it is clear that the Opposite Party received an amount of Rs.5,52,838/- from the Complainant but failed to commence construction of the project. Moreover, the Opposite Party has not placed on record any material to show that the Complainant had agreed to the change in allotment.

32. It is further noted that the Opposite Party issued a payment schedule vide letter dated 15.10.2010, wherein an outstanding amount of Rs.2,76,418.75/- was shown as payable at the stage of commencement of construction. However, the Opposite Party has not placed on record any cogent evidence to establish the date on which the construction of the project was actually commenced. On the contrary, the Complainant has stated that no construction had commenced at the project site till September 2012.

33. Furthermore, it is apparent from the record that the Opposite Party issued the last payment schedule vide letter dated 15.10.2010. Thereafter, the Opposite Party did not raise any demand until 18.04.2012, when it started issuing letters/reminders dated 18.04.2012, 03.05.2012, 23.05.2012, 01.06.2012, 19.06.2012, 07.07.2012 and 20.07.2012, calling upon the Complainant to clear the outstanding amount. Moreover, the Complainant opted construction linked payment towards the payment of said allotment but the Opposite Party has failed to file any satisfactory

document/evidence to show the progress of construction during the aforesaid period or to explain the reason for not raising any demand between 15.10.2010 and 18.04.2012.

34. As a result, we are of the view that the Complainant could not reasonably be expected to keep making payments without knowing the status of construction. The Opposite Party was required to proceed with the construction within a reasonable time and raise demands as per the construction-linked payment plan

35. Consequently, we hold that the Opposite Party was deficient in service by changing the allotment without obtaining the consent of the Complainant, failing to complete the construction of the said apartment within a reasonable period.

36. 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 complainant i.e., ***Rs.5,52,838/-*** 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 **15.09.2026** (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 **15.11.2026**;

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 **15.11.2026**, 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.

37. 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/-.
38. Applications pending, if any, stands disposed of in terms of the aforesaid judgment.
39. 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.
40. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(BIMLA KUMARI)
MEMBER (FEMALE)

Pronounced On:
15.09.2026

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