

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

**Date of Institution: 20.03.2024**

**Date of Hearing: 16.12.2025**

**Date of Decision: 08.06.2026**

**COMPLAINT CASE NO.- 57/2024**

**IN THE MATTER OF**

**1. MR. PARMOD KUMAR MAHOPATRA**

WORKING AT:

NATIONAL HIGHWAY AUTHORITY OF INDIA

AT: G-5 & 6, SECTOR-10,

DWARKA, NEW DELHI-110075

NETWORK INDIA BUILDING,

MAIN SARASWATI MARG,

KAROL BAGH, NEW DELHI

**2. MR. MAHENDER SINGH BISHT**

WORKING AT:

NATIONAL HIGHWAY AUTHORITY OF INDIA

AT: G-5 & 6, SECTOR-10,

DWARKA, NEW DELHI-110075

**(Through: Mr. Sarvesh Roy, Advocate)**

...Complainants

**VERSUS**

**SANCHAR NEST SAHKARI AWAS SAMITI LTD.**

**(THROUGH ITS SECRETARY)**

OFFICE AT:

PLOT NO. GH-07, SECTOR-6,

PALM WOOD ENCLAVE, WAVE CITY,

DELHI-MEERUT EXPRESSWAY, GHAZIABAD-201002.

**(Through: Mr. Sumit Kumar, Advocate)**

...Opposite party



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

Present: Mr. Sarvesh Roy, counsel for Complainants (through VC)  
(M. No. 8800961288)  
Mr. Rahul Mehra, counsel for OP (M. No. 9643477620)

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

**JUDGMENT**

1. The present consumer complaint has been filed on 20.03.2024 by Complainants before this Commission under Section 49 read with Section 35 of the Consumer Protection Act, 2019 alleging deficiency of service and unfair trade practice on the part of Opposite Party and have prayed the following reliefs:

- “(i) Direct the Opposite Party to refund to the Complainants with same interest the amount which the Complainants with same interest have deposited with the Opposite party i.e. Rs. 39,08,865/- (Rupees thirty nine lakh eight thousand eight hundred sixty five only) to Complainant no.1 and Rs. 40,34.234/- (Rupees forty lakh thirty four thousand two hundred thirty four only) to Complainant no.2. (in total Rs. 79,43,099/- (rupees seventy-nine lakh forty three thousand ninety nine only) along with compensation in the form of simple interest @ 18% per annum from the date of deposit till date of actual refund to each Complainants.*
- (ii) Direct opposite party to pay to the Complainants with same interest a sum of Rs. 10,00,000/- each on account of mental harassment and trauma.*
- (iii) Award cost of the Complainant to each Complainants with same interest.*
- (iv) Pass any such further order or orders which this Hon'ble Commission deems fit and proper in the facts and circumstances of the present case.*



2. Brief facts necessary for the adjudication of present complaint are that the Opposite Party is a Society registered under the Uttar Pradesh Cooperative Societies Act, 1965 and engaged in development and construction of residential flats for its members. The Complainants became members of the Society vide Membership No. 180 & 336 in March and September, 2010 respectively. Initially, the Opposite Party launched a housing project situated at NH-24, opposite Hi-Tech City, Sector-62, Noida and advertised construction of residential flats for its members. Relying upon the representations and assurances made by the officials of the Opposite Party, the Complainants applied for allotment of 3BHK flats measuring approximately 1500 sq. ft. by paying membership fees of Rs.10,000/- each. The Opposite Party assured that possession of the flats would be delivered by the year 2012 at the agreed cost of Rs.24,00,000/- for Complainant No. 1 and Rs.26,60,300/- for Complainant No. 2 but a disputes arose regarding the land of the original project. Therefore, the Opposite Party compelled the Complainants and other members to shift their bookings to another project namely "Palm Wood Enclave", Plot No. GH-01, Wave City, NH-24, Ghaziabad, upon payment of additional amount. The Complainants accepted the transfer on the assurance that the amount already deposited in the earlier project would be adjusted in the new project. The Opposite Party revised the cost of the flats in the new project at Rs.28,78,200/- approximately for both the Complainants for 3BHK flats of admeasuring 1599 sq. ft. super area. Thereafter, Agreements dated 25.07.2013 and Undertakings dated 20.11.2013 were executed between the parties. On the basis of the said undertakings, the Complainants availed home loan facilities from financial institutions for payment of the demanded consideration amount.



Despite repeated assurances regarding completion of construction and delivery of possession, the Opposite Party continuously delayed the project and repeatedly extended the expected date of completion. The Opposite Party kept revising and escalating the cost of the flats by imposing additional charges under various heads such as parking charges, escalation cost, GST, service tax, mechanical ventilation charges, smoke detector charges and other miscellaneous charges. Thus, the Complainants were compelled to avail additional and top-up loans in the years 2018.

3. Thereafter, the Opposite Party vide Allotment Letters dated 23.06.2019 & 24.06.2019, allotted Flat No. 2008, 20<sup>th</sup> floor and Flat No. 1701, 17<sup>th</sup> floor in Tower-B of the project, to the Complainants. However, the allotments existed merely on paper and physical possession of the flats has not been handed over till date. Despite non-completion of the project, the Opposite Party allegedly continued raising repeated demands for payment and threatened levy of penal interest and cancellation in case of default. During the span of 14 years from the date of the becoming the members of the society i.e., 2010, the Opposite Party continued making payments under pressure and coercion. In total, the Complainant No. 1 paid an amount of Rs.39,08,865/- while Complainant No. 2 paid Rs.40,34,234/- to the Opposite Party, which was substantially higher than the original agreed sale consideration. However, the Opposite Party failed to complete construction and deliver possession within the promised time period despite receiving huge amounts from the Complainants.
4. Furthermore, the Opposite Party has registered the said construction of housing project vide UP-RERA registration dated 08.08.2017 wherein



the Opposite Party itself declared the proposed completion date of the project as 30.12.2018, which was subsequently extended till 30.12.2019. More so, the Complainants came to know from the inspection report dated 21.01.2022 available on the UP-RERA website that only about 40-42 laborers were working at the project site and that substantial time still required for completion of the project. The Opposite Party issued show cause notices to Complainant No.1 demanding further payment of Rs.10,33,157/- but the same was objected by the Complainants as the Complainants had already paid the said demand. However, the Opposite Party vide letter dated 27.11.2023 cancelled the membership of the Complainant no.1 and proposed to refund after deductions towards taxes and other charges but the Opposite Party also failed to refund the deposited amount along with interest. The Complainants also made several request to refund the said amount but no positive response was received from the Opposite Party. Aggrieved by the acts and omissions of the Opposite Party, the Complainants issued legal notice dated 28.02.2024 seeking refund of the deposited amounts along with interest @18% per annum but was of no avail.

5. The Opposite Party contested the present case and raised preliminary objections as to the maintainability of the present case. The counsel for the Opposite Party further submitted that the Complainants are not “Consumers” within the meaning of Section 2(7) of the Consumer Protection Act, 2019 as the Opposite Party is not a commercial builder or service provider but a merely cooperative housing society constituted for construction of affordable housing for its members. Moreover, the Complainants are members and stakeholders of the Society, possessing voting rights and participation in the General Body Meetings (GBM),



including decisions relating to administration, finances, construction, and refund policies. Therefore, there exists no consumer-service provider relationship between the parties. He also submitted that the Complainants failed to disclose any cause of action as the complaint is based on incorrect facts, vague allegations and the Complainants have deliberately concealed material facts, made false assertions and attempted to mislead this Commission by presenting an incorrect factual matrix. He further contended that the Society is governed by the Uttar Pradesh Cooperative Societies Act, 1965, which provides a complete mechanism for adjudication of disputes through arbitration, tribunals, and appellate authorities. Hence, the present consumer complaint is stated to be barred and not maintainable before the Consumer Commission.

6. The Counsel for the Opposite Party further contended that the Complainants had voluntarily applied for cancellation/refund of their membership and allotment, which was duly approved by the governing body and communicated to them. However, the Complainants allegedly failed to complete the required formalities for refund. Moreover, no interest is payable on such refund as per the Membership Agreement and the cancellation was sought by the Complainants themselves. It is further contended that two unrelated complainants with separate causes of action have jointly filed the complaint merely to invoke the pecuniary jurisdiction of the present Commission, whereas jurisdiction properly lies before the District Consumer Commission.
7. It is further contended that the Complainants suppressed material facts that their complaint was dismissed before the RERA Authority. According to the Opposite Party, the present proceedings amount to Forum shopping after failure before RERA, and the proper remedy would



have been to approach the Appellate Authority under the RERA framework. On merits, while admitting certain factual aspects such as issuance of allotment letters and registration of the project under RERA, the Opposite Party has denied allegations of false assurances, deficiency in service, or unfair trade practices. Delay in the project occurred due to unavoidable circumstances including land litigation, increase in construction costs, COVID-19 pandemic, and environmental restrictions, all of which were discussed and ratified in the GBMs. The Opposite Party for dismissal of complaint with heavy costs.

8. The Complainants have filed the Rejoinder rebutting all the allegations made in the written statement of the Opposite Party and reiterated the contents of the consumer complaint. It is submitted that the written statement is false, frivolous, misleading, and devoid of merit. They are “Consumers” under Sections 2(5) and 2(7) of the Consumer Protection Act, 2019, while the opposite party, though registered as a Co-operative Society, acted as a builder/promoter and service provider by undertaking construction of flats for consideration and registering the project under UP RERA. The present complaint is maintainable under Section 100 of the Consumer Protection Act, which provides remedies in addition to other laws. It is further submitted that disputes between Co-operative Societies and their members are maintainable before Consumer Fora, as held in various judgments of the Hon’ble Supreme Court and NCDRC. The joint complaint is also stated to be maintainable under Section 35(1)(a) of the Act as both Complainants have similar grievances arising from a common cause of action. The Complainants deny suppression of facts and clarify that the earlier RERA complaint was dismissed only for



non-appearance and not on merits. The Opposite Party has failed to fulfill its contractual obligations and is liable for deficiency in service.

9. All parties have filed their Evidence by way of affidavit in order to prove their averments on record.
10. The Complainants have filed the written arguments and relied upon the following judgments:
  - i.) *Alpha G184 Owners Association versus Magnum International Trading Company Pvt. Ltd. 2023 Livelaw (SC)442 para 18 to 20;*
  - ii.) *DLF Homes Panchkula Pvt. Ltd. V. DS Dhanda and Ors. (2020) 16 SCC 318 at para 21 to 23;*
  - iii.) *Promila Arora v. Landmark Apartments (P) Ltd., Complaint Case No. 152 of 2018 decided on 29-11-2021.*
11. The Opposite Party has also filed the written arguments and reiterated the objections raised in the written statement.
12. We have perused the material available on record.
13. The ***first question*** for consideration is before us is ***whether the Complainants fall under the category of ‘Consumer’ defined under the Consumer Protection Act, 2019 and can jointly file the complaint for the same cause of action.***
14. The counsel for the Opposite Party contended that the Complainants are not “Consumers” within the meaning of Section 2(7) of the Consumer Protection Act, 2019 as the Opposite Party is not a commercial builder or service provider but a merely cooperative housing society constituted for construction of affordable housing for its members.
15. To resolve this issue, it is imperative to refer to Section 2(31) of the Consumer Protection Act, 2019, wherein it is provided as under:



“Section 2(31) “person” includes-

- (i) an individual;
- (ii) a firm whether registered or not;
- (iii) a Hindu undivided family;
- (iv) a co-operative society;
- (v) **an association of persons whether registered under the Societies Registration Act, 1860 or not;**”

16. Analysis of Section 2(31) of the Consumer Protection Act, 2019 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 in the present case is a society registered comes under the definition of ‘person’ as defined in the statutory provision of Consumer Provision Act, 2019.

17. Further, To comment on this issue, we deem it appropriate to refer to Section 2(7) of the Consumer Protection Act, 2019, which provides as under:

“(7) “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 service 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 service 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 service for any commercial purpose.”*

18. From the above, it clear that a person who buys goods and 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 is a consumer
19. We also deem it appropriate 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..”*

20. 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.”*



21. In the present case, the Complainants hired the service of the Opposite Party and had jointly paid an amount of Rs.79,43,099/- towards consideration to the Opposite Party which was providing its services to the Complainants. Thus, we are of the considered view that the Complainant is a 'Consumer' as prescribed under Section 2(7) of the Consumer Protection Act, 2019. Accordingly, the contention of the Opposite Party is answered in negative.
22. The *second issue* to be adjudicated is *whether the present Complainants have cause of action to approach this commission under Consumer Protection Act' 2019*. It is imperative to refer to Section 69 of the Consumer Protection Act, 2019 wherein it is provided as under: -

*“(1) The District Commission, 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 Commission, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:*

*Provided that no such complaint shall be entertained unless the District Commission or the State Commission or the National Commission, as the case may be, records its reasons for condoning such delay.”*

23. Analysis of Section 69 of the Consumer Protection Act, 2019 leads us to the conclusion that this commission is empowered to admit a complaint if it is filed within a period of 2 years from the date on which cause of action has arisen. In the present case neither possession of the flats in



question has been delivered to the Complainants nor the Opposite Party refund the total amount deposited by them. We further deem it appropriate to refer to **Mehnga Singh Khera and Ors. Vs. Unitech Ltd.** as 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.**”*

24. Applying the above settled law, it is clear that failure to deliver possession being a continuous wrong it constitutes a recurrent cause of action and, therefore, so long as the possession is not delivered to the Complainants. The Complainants are within their right to file the present complaint before this commission.
25. The **third question** for consideration is before us is **whether this Commission has jurisdiction to entertain the present matter.**
26. The Opposite Party further contended that two unrelated Complainants with separate causes of action have jointly filed the complaint merely to invoke the pecuniary jurisdiction of the present Commission, whereas jurisdiction properly lies before the District Consumer Commission.
27. On a perusal of the record, it is noted that Complainants have filed the present Complaint having similar interest under Section 35(1)(c) read with Section 47(1)(a)(i) of the Consumer Protection Act, 2019, against



the Opposite Party, alleging deficiency in service and unfair trade practices.

28. Therefore, we deem it appropriate to section 2(5)(v) and section 35(1)(c) of the Act:

“2(5)(v) “complainant means-

*v. one or more consumers, where there are numerous consumers having the same interest;”*

“section 35 Manner in which complaint shall be made

“(1)(c)” *one and more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, on behalf of, or for the benefit of, all consumers so interest; or”*

29. The aforesaid provisions reflects that the one and more consumer, where there are numerous consumers having the same interest, with the permission of the commission, on behalf of or for the benefit, all consumers so interest can file a joint complaint.

30. Further, we deem it appropriate to refer **Brigade Enterprises Ltd. Vs. Anil Kumar Virmani & Ors (2022) 4 SCC 238**, wherein the Hon’ble Supreme Court held that:

“33. Section 35(1) reads as under:

*35. Manner in which complaint shall be made. (1) A complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be filed with a District Commission by—*

*(a) the consumer,*

*(i) to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided; or*

*(ii) who alleges unfair trade practice in respect of such goods or service;*



(b) any recognised consumer association, whether the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided, or who alleges unfair trade practice in respect of such goods or service, is a member of such association or not;

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central Government, the Central Authority or the State Government, as the case may be:

Provided that the complaint under this subsection may be filed electronically in such manner as may be prescribed.

34. A careful reading of the above provisions would show that there is no scope for the contention that wherever there are more consumers than one, they must only take recourse to Order I Rule 8 CPC, even if the complaint is not on behalf of or for the benefit of, all the consumers interested in the matter. There may be cases where only “a few consumers” and not “numerous consumers” have the same interest. ***There is nothing in the Act to prohibit these few consumers from joining together and filing a joint complaint. A joint complaint stands in contrast to a complaint filed in a representative capacity...***

31. The above dicta reflect that there is nothing in the Act to prohibit consumers from coming together and filing a joint complaint.
32. To deal with the issue in the regarding the pecuniary jurisdiction, the Central Government vide Notification dated 30.12.2021 issued under the Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021, revised the pecuniary jurisdiction of the Consumer Commissions. In terms of the said Notification, the pecuniary jurisdiction of the State Commission extends to complaints where the value of goods or services paid as consideration exceeds Rs.50 lakh but does not exceed Rs.2 crore. In the present case, the Complainants have admittedly paid a total sum of



Rs.79,43,099/-, which falls within the aforesaid pecuniary limits. Accordingly, this Commission is vested with the pecuniary jurisdiction to entertain and adjudicate the present complaint.

33. The counsel for the Opposite Party further ***contended that the project in question is registered under RERA and therefore, this commission cannot adjudicate the present complaint.*** The law is no more res integra on this issue and is well settled by the dicta in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.***" reported in (2021) 3 SCC 241, wherein the Apex Court has held as under:

*"42. In a recent judgment delivered by this Court in Imperia Structures Ltd. Vs. Anil Patni, it was held that remedies under the Consumer Protection Act were in addition to the remedies available under special statutes. The absence of a bar under Section 79 of the RERA Act to the initiation of proceedings before a forum which is not a civil court, read with Section 88 of the RERA Act makes the position clear. Section 18 of the RERA Act specifies that the remedies are "without prejudice to any other remedy available". We place reliance on this judgment, wherein it has been held that: (SCC p.811, paras 31-32).*

*"31. Proviso to Section 71(1) of the RERA Act entitles a complainant who had initiated proceedings under the CP Act before the RERA Act came into force, to withdraw the proceedings under the CP Act with the permission of the Forum or Commission and file RCA No.3/2020 Smt. Manju Gupta & Anr. Vs. M/s Parsvnath Developers Ltd.*



*Page No.10 of 14 an appropriate application before the adjudicating officer under the RERA Act. The proviso thus gives a right or an option to the complainant concerned but does not statutorily force him to withdraw such complaint nor do the provisions of the RERA Act create any mechanism for transfer of such pending proceedings to authorities under the RERA Act. As against that the mandate in Section 12(4) of the CP Act to the contrary is quite significant.*

*32. Again, insofar as cases where such proceedings under the CP Act are initiated after the provisions of the RERA Act came into force, there is nothing in the RERA Act which bars such initiation. The absence of bar under Section 79 to the initiation of proceedings before a fora which cannot be called a civil court and express saving under Section 88 of the RERA Act, make the position quite clear. Further, Section 18 itself specifies that the remedy under the said section is "without prejudice to any other remedy available". Thus, the parliamentary intent is clear that a choice or discretion is given to the allottee whether he wishes to initiate appropriate proceedings under the CP Act or file an application under the RERA Act".*

34. It is clear from the above dicta that the remedies available under the Consumer Protection Act are in addition to the remedies provided under the special statutes and if the proceedings under the Consumer Protection Act are initiated after RERA Act came into force, there is



nothing in the RERA Act which bars such initiation.\_Relying on the above settled law, the contention of the Opposite party that this commission cannot adjudicate the present complaint complainant on the ground that the project is registered under RERA is devoid of any merit and dismissed.

35. The *main question* for consideration before us is *whether the Opposite Party is deficient in providing its services to the Complainants*. The expression Deficiency of Service has been dealt with by the Hon'ble Apex Court in *Arifur Rahman Khan and Ors. vs. DLF Southern Homes Pvt. Ltd. and Ors.* reported at *2020 (3) RCR (Civil) 544*, wherein it has been discussed as follows:

*"23. ....The expression deficiency of services is defined in Section 2 (1) (g) of the CP 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.*

*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) (o) 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 fulfilment of a contractual obligation.*

36. The above dicta reflect that failure on the part of the developer to deliver possession of the flat to the purchaser within the contractually stipulated period constitutes a deficiency in service.
37. Returning to the facts of the present case, we failed to find any document/provision which shows us the time period within which Opposite Party had to handover the possession of the said flats to the Complainants.
38. To resolve the aforesaid issue, it is appropriate to refer to the ***First Appeal no. 348/2016*** tiled as "***Ajay Enterprises Pvt. Ltd. and Ors. vs. Shobha Arora and Ors.***" decided on ***10.05.2019***, wherein the Hon'ble NCDRC has 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."*

39. Relying on the above settled law, if the possession is delivered beyond the 42 months or beyond 48 months, the deficiency in service on the part of the Opposite Party shall stand proved. It is clear that the Opposite Party failed to handover the possession of the flat in question even after the passing of more than fifteen years from the date of agreement dated 25.07.2013.
40. The Counsel for the Opposite Party submitted that the Complainants had failed to clear outstanding payments as demanded by the Society and had themselves sought cancellation of their memberships/allotments. He further submitted that although the cancellation was approved by the Opposite Party, the Complainants failed to complete the necessary formalities for processing the refund; therefore, the Opposite Party cannot be held liable. On a perusal of the record, it is noted that the Complainants had booked two separate 3BHK flats having a super area of 1599 sq. ft. each in the project of the Opposite Party for a total sale consideration of approximately Rs.28,78,200/- per flat. Thereafter, separate Agreements dated 25.07.2013 were executed between the parties in respect of the said flats. It is further evident from the record that the Complainants arranged funds for payment of the consideration amount by availing home loan facilities from financial institutions and paid a total sum of Rs.79,43,099/- (Complainant No.1 paid Rs.39,08,865/- and



Complainant No.2 paid Rs.40,34,234/-) to the Opposite Party as and when demanded by it. Therefore, it is clear that the Complainants made timely payments of the agreed consideration amount in terms of the Agreements.

41. Further, on a perusal of the record, it is noted that the Opposite Party vide allotment letters dated 23.06.2019 and 24.06.2019, allotted flats to the Complainants after almost six years from the date of the Agreements. However, the Opposite Party continued extending the date of completion and simultaneously raised additional demands under different heads, thereby increasing the financial burden upon the Complainants. It is also evident that while the Complainants duly fulfilled their obligations by making payments as demanded and by availing loan facilities for the said purpose, the Opposite Party failed to fulfil its obligation of delivering possession of the flats within a reasonable period of 42 to 48 months from the date of the Agreements despite receipt of the aforesaid substantial amount.
42. The Opposite Party has contended that the delay, if any, in handing over possession was due to land disputes, increase in construction costs, environmental restrictions and the COVID-19 pandemic. However, the Opposite Party has failed to file any cogent documentary evidence to explain the inordinate delay in completion of the project and handing over possession of the flats. More so, no document has been filed by the Opposite Party to show the period during which the alleged environmental restrictions remained in force or the manner in which the project was affected thereby. In the absence of any supporting evidence, the said contention cannot be accepted. Furthermore, it is an admitted position that the Agreements between the parties were executed in the



year 2013. It is clear from the record that possession of the flats remained undelivered for several years even prior to the outbreak of the COVID-19 pandemic in the year 2020. Therefore, the contention regarding COVID-19 raised by the Opposite Party to justify the inordinate delay in handing over possession is devoid of merit and is accordingly rejected.

43. Consequently, we hold that the Opposite Party was deficient in rendering services to the Complainants by failing to hand over possession of the flats within a reasonable period and kept the amounts deposited by the Complainants for almost sixteen years from the date of agreements.
44. Keeping in view the facts and circumstances of the present case and the law discussed hereinabove, we direct the Opposite Party to refund a sum of Rs.39,08,865/- to Complainant No.1 and Rs.40,34,234/- to Complainant No.2, along with interest in the following manner:

- A. An interest @ **8.25% p.a.** (being the rate of interest charged by the bank on the home loan) calculated from the date on which each installment/payment was received by the Opposite Party till **08.06.2026** (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 **08.08.2026**;
- 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 **08.08.2026**, the entire amount is to be refunded along with an interest @ **11.25% p.a.** calculated from the date on which each



installment/payment was received by the Opposite Party till the actual realization of the amount.

45. In addition to the aforesaid and taking into consideration the facts and circumstances of the present case, the Opposite Party is directed to pay:
- A. Rs.4,00,000/- towards mental agony and harassment suffered by the Complainants (Rs.2,00,000/- each); and
  - B. Litigation costs to the extent of Rs.1,00,000/- (Rs.50,000/- each).
46. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
47. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 2019. The judgment be uploaded forthwith on <https://e-jagriti.gov.in> for perusal of the parties.
48. File be consigned to record room along with a copy of this Judgment.

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

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

**Pronounced On:**  
**08.06.2026**

LR-ZA

