



CONSUMER

REAL ESTATE

Consumer Commission Fines Builder for Deficiency in Service, Directs Flat Possession

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Introduction

In a decisive ruling fortifying the rights of homebuyers, the Delhi State Consumer Disputes Redressal Commission has held E-Homes Infrastructure Pvt. Ltd.[1] guilty of deficiency in service for arbitrarily demanding additional payment under the pretext of Service Tax and GST and for wrongfully cancelling a flat allotment despite substantial payment by the purchasers. The Commission directed the builder to hand over possession of the flat to the complainants, Mr. Rajeev Menon and others, within two months and to compensate them for mental agony and litigation expenses.

This judgment not only highlights the accountability of builders in maintaining transparency and fairness in financial dealings but also reinforces the principle that homebuyers remain protected from unjustified and post-facto monetary demands in real estate transactions.

Table of contents

- [Introduction](#)
- [Background of the Case](#)
- [Issues Before the Commission](#)
- [Findings of the Commission](#)
- [Order Passed](#)
- [Legal Significance](#)
- [Author's View](#)

Background of the Case

The complainants, Mr. Rajeev Menon, Mrs. Veena R. Menon, and Mr. Nachelil Kumarapillai Kumar Pillai, had booked a residential flat bearing Flat No. D-2202 in Tower D in the housing project titled “The Jewel of Noida” developed by E-Homes Infrastructure Pvt. Ltd. The total sale consideration for the unit was ₹72,61,000, and an Allotment Agreement was executed on 26th April 2017.

Pursuant to the agreement, the complainants paid ₹1,00,000 on 28th April 2017 and ₹9,89,150 on 31st May 2018. Subsequently, they availed a home loan of ₹58,08,800 from PNB Housing Finance Ltd., with a Tripartite Agreement executed on 27th July 2017. The builder's receipts for these payments clearly indicated “Zero” against the columns for Sales Tax and Service Tax.

In total, the complainants had paid ₹68,97,950, amounting to 95% of the total consideration, leaving only 5% payable upon possession. Despite repeated communications, the builder failed to provide any clarity regarding the possession date. To their surprise, the complainants later received an undated demand letter for ₹15,25,120, purportedly towards Service Tax and GST.

When the complainants objected to the sudden and inflated demand since no such tax component was ever indicated earlier the builder issued a cancellation letter dated 11th May 2018, cancelling the allotment of the flat. The complainants sent a legal notice dated 7th July 2018 demanding reversal of the cancellation and refund of the alleged excess charges, but the builder remained unresponsive.

Consequently, the complainants filed a consumer complaint under Section 17 of the Consumer Protection Act, 1986 before the Delhi State Consumer Disputes Redressal Commission, alleging deficiency in service and unfair trade practice, and sought possession of the flat, withdrawal of the arbitrary demand, and compensation for harassment and litigation costs.

Issues Before the Commission

The Delhi State Consumer Disputes Redressal Commission examined the following key issues:

1. **Whether the complainants qualified as “consumers”** under Section 2(1)(d) of the Consumer Protection Act, 1986, or had purchased the flat for a commercial or investment purpose, as alleged by the builder.
2. **Whether there was deficiency in service** on the part of the opposite parties by:
 - Raising an unjustified and belated demand of ₹15,25,120 under the pretext of Service Tax and GST after receiving 95% of the sale consideration; and

- Arbitrarily cancelling the allotment of the flat in violation of contractual obligations and without any valid justification.

Findings of the Commission

On the first issue, the Commission rejected the builder's contention that the complainants were investors engaged in commercial activity. Relying on the precedents set in *Aashish Oberai v. Emaar MGF Land Ltd.*^[2] and *Narinder Kumar Bairwal v. Ramprastha Promoters and Developers Pvt. Ltd.*^[3], it held that merely purchasing a property or even multiple properties does not, by itself, establish a commercial purpose. The burden of proof to demonstrate speculative intent rests on the builder, and in this case, no documentary evidence was produced to substantiate such a claim. The complainants were therefore held to be “consumers” within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986.

On the second issue, the Commission observed that the builder had already received 95% of the total sale consideration, and all corresponding receipts explicitly mentioned “Zero” against the columns for Sales Tax and Service Tax. Neither the Allotment Agreement dated 26 April 2017 nor the Payment Schedule contained any clause authorizing the builder to levy additional taxes at the time of possession.

Despite this, the builder sought to impose a belated and arbitrary demand of ₹15,25,120, purportedly towards Service Tax and GST, and proceeded to cancel the flat when the complainants objected. The Commission found that the opposite parties had failed to produce any documentary evidence showing that such taxes were due or recoverable at a later stage. The demand, therefore, was held to be without legal or contractual basis.

The Commission concluded that the builder's conduct amounted to deficiency in service under Section 2(1)(g) of the Act, as it reflected clear fault and shortcoming in performance of contractual obligations. The arbitrary cancellation of the allotment was also found to be an unfair and unjust act causing mental and financial distress to the complainants.

Order Passed

1. The complainants shall clear any **legitimate outstanding dues** (excluding the disputed tax demand) within the same period.
2. Pay **₹3,00,000** as compensation for **mental agony and harassment**, and
3. Pay **₹50,000** towards **litigation costs**.

In case of non-compliance, the complainants were granted liberty to initiate execution proceedings under **Sections 25 and 27 of the Consumer Protection Act, 1986**.

Legal Significance

This decision carries significant implications for homebuyers and real estate developers alike. The Commission reaffirmed that builders cannot impose arbitrary or retrospective financial demands under the pretext of statutory taxes such as GST or Service Tax, particularly when such charges are not explicitly stipulated in the Allotment Agreement or Payment Schedule.

By holding that the burden of proof lies on the builder to demonstrate any commercial intent or liability for additional taxes, the Commission strengthened consumer protection in property transactions. The judgment also reinforces that once a builder accepts substantial payment here, 95% of the total sale consideration the contractual terms cannot be unilaterally altered to the detriment of the buyer.

Moreover, the ruling highlights the scope of “deficiency in service” under Section 2(1)(g) of the Consumer Protection Act, 1986, emphasizing that deviation from contractual commitments, arbitrary cancellations, and lack of transparency in billing practices constitute actionable misconduct.

The judgment promotes fairness and accountability in the real estate sector, ensuring that homebuyers are protected from coercive demands and cancellations that are not grounded in law or agreement.

Author's View

The decision in *Rajeev Menon & Ors. v. E-Homes Infrastructure Pvt. Ltd.* is a commendable reiteration of the judiciary's commitment to safeguarding consumer interests in the real estate sector. The Commission's reasoning reflects a pragmatic and consumer-centric approach ensuring that developers remain bound by the financial and contractual transparency expected of them.

The case highlights that builders cannot retrospectively burden buyers with unforeseen tax liabilities or use such claims as a pretext to cancel allotments. The Commission rightly emphasized that contractual terms must be clear and enforceable, and any ambiguity should not be exploited to the disadvantage of the consumer.

Further, by recognizing the complainants as legitimate “consumers” despite their residence abroad, the ruling widens the protective ambit of the Consumer Protection Act to include non-resident Indians who invest in Indian housing projects for genuine residential purposes. This judgment strengthens the principle that trust and good faith are integral to real estate transactions and that developers must act with fairness, accountability, and adherence to statutory obligations.

For more details, write to us at: contact@indialaw.in

[1] COMPLAINT NO.-1450/2018

[2] I (2017) CPJ 17(NC)

[3] CC-1122/2018

Related Practice Areas

- Consumer Dispute
- Real Estate