

**BEFORE ADDL. CONSUMER DISPUTES REDRESSAL FORUM,
MUMBAI SUBURBAN DISTRICT.**

Admn. Bldg., 3rd floor, Nr.Chetana College, Bandra-East, Mumbai-051.

Complaint No. CC/193/2010

Filing – 21/01/2010

Date of

Date
of Order–
30/09/2014

Bhawani Tower “A” Wing C.H.S Ltd.,
A-Wing, Adishankaracharya Marg,
Opp. IIT Main Gate, Powai,
Mumbai-400 076.

---- Complainant

V/s.

- 1) Mr. Chittaranjan Sharma,
- 2) Mr. Navak Kishore Sharma
- 3) Mr. Narrotam Sharma,
- 4) Mr. Chander Sharma,
- 5) Smt. Sunita Sharma

All at- Bombay House Builder & Road Makers,
Cinema Ground, Opp. I.I.T. Main Gate,
Powai, Mumbai-400 076.

---- Opponents

BEFORE:-

Shri S.S.Vyavahare, President.
Shri S.V. Kalal, Memembr.

PRESENT:-

Complainant by Adv. Vinod Sampat
OpponentNo.1 to 4 by Adv. Raymond Samuel

ORDER

(Per- Mr. S. S. Vyavahare, Hon’ble President.)

1) The complainants have filed this complainant under Section 12 of the Consumer Protection Act, against the opponents for getting compensation, alleging deficiency of service and unfair trade practice on their part.

2) Facts giving rise to the present complaint in short are as under.

3) Opponent No.1 deals in the business of construction under the name of Arunodaya Construction Co. having its office at Powai, Mumbai. Opponent No. 2 to 5 are the

partners of opponent No.1. The opponents have constructed residential building at Powai on land bearing CTS No. 32 at Gandhi Nagar.

4) The complainant is registered co-operative society, registered under Maharashtra Co-operative Society Act on 09/08/1985 and there are 52 members of the complainant society. The opponents constructed two building of basement plus 13 floors on land bearing No.32 of Gandhi Nagar and out of these two building for A-Wing the complainant society has been formed. The members of the complainant society who are flat holder of B-Wing have purchased the respective residential flats in the year 1983-84 and have also possession of respective flats. The complainant society was formed on 05/12/1985.

5) It is the contention of the complainant that after the formation and registration of complainant co-operative society on repeated count the opponents were requested and called upon to execute the conveyance deed of the property of the complainant society. It is further contention of the complainant that member of the complainant society while executing the agreement of purchase of the respective flats have not only agreed to purchase their respective flats but have also agreed to purchase the open space available to their respective flats and building. As such by getting conveyance deed executed they have right to purchase open space adjacent to their building as the open space adjacent to the building belongs to property of complainant society. However, the opponents are trying to allot the open space available to the complainant society to other flat holders by intending to construct another building. Therefore the opponents are deliberately delaying to execute the conveyance deed of the property of the complainant society. It is further contention of the complainant that it is statutory obligations of the builder to handover copy of agreement of sale, copy of sanctioned map, designs, specifications prepared by the architect, copy of occupation certificate and layout of building and other compliances of statutory obligations as per MOFA Act. However, opponent are also not complying these statutory mandatory compliances. Therefore the alleged act on the part of the opponent amounts to deficiency of service and unfair trade practice. The complainant therefore has filed his complaint and called upon the opponent to execute conveyance deed of the property of the complainant society, to handover the occupation certificate of "B" Wing of the complainant society and to carry out statutory and mandatory compliances as per the provisions of MOFA act and also for getting compensation for delay on the part of opponent to execute the conveyance deed.

6) The opponents have resisted the complaint by filing their written statement wherein they have contended that complainant's complaint is false, frivolous and not based on true facts. The opponents have denied all adverse allegations made by the complainant in respect of deficiency of service and unfair trade practice. The opponents have also denied the

jurisdiction of the forum to entertain the dispute pending before the forum. The opponents have also challenged the status of the complainant as a consumer. According to opponents the complainant which is co-operative housing society is a body and therefore it does not come within the definition of consumer. Moreover the nature of dispute pending in the complaint is not tribal before the consumer forum. While admitting the fact the complainant is a co-operative housing society registered under co-operative society Act having 52 members. Opponents also admit that flat purchasers from the said society have entered into an agreement of sale with the opponent. However, the opponent categorically deny that deliberately they have delayed the conveyance of the property of complainant society with intend to defeat the right of member of complainant society. According to the opponent the complainant has not produced the series of all agreement of all flats and therefore in absence of all copies of agreement of sale the title of the flat purchasers cannot be determined. There was absolutely no co-operation from the flat purchasers for production of necessary documents from their part. The opponents further submit that, though as per the provisions of MOFA Act it is obligatory on the part of builder or developer to execute the conveyance in respect of property of the complainant even then the conveyance of the said property cannot go beyond the terms of agreement duly entered into between respective flat holders. However the complainant society by claiming the relief of conveyance wants more area and title over the said property under the guise of open space. Therefore it is not possible for the opponent to execute the conveyance deed of the property as per whims and fancy of the complainant. According to the opponent the entire layout also contains several building / structure and the project of the opponent is incomplete. Therefore conveyance certificate for partial property or partial compliance of construction as claimed by the complainant is not possible. For the same ground the opponent is not in a position to give occupancy certificate. It is further contended by the opponent that, the project of the opponent was redevelopment in which the tenants were not granted authority to avail F.S.I. and to obtain the additional T.D.R. Therefore according to opponent there is not deficiency of service or unfair trade practice on their part. The opponents therefore pray to reject the complaint.

7) On respective contentions of the parties following point arise for our considerations. Our findings are recorded against the same.

POINTS

- 1) Does the complainant prove that the opponents have indulged in deficiency of service by not executing the conveyance deed in respect of property purchased by them?
Proved
- 2) Whether complainant is entitled to get compensation? **Yes**

3) What order? As per final order.

REASONS

Admitted Facts

8) Before going to evidence on record it will not be out of place to go through some of the facts which are not disputed. It is admitted position that, the building of complainant society is standing on CTS No. 32 of Gandhi Nagar. It is also admitted position that on the same plot the building of B-Wing of another co-operative housing society known as Bhawani Tower "B" Wing C.H.S. which is situated to the adjacent to the complainant society. It is also admitted position that these two buildings were constructed in 1984. It is admitted position that buildings of A & B wing are having basement plus 13 floors. It is also admitted position that the area of the land of the plot of these two building as per the agreement of sale of respective flat holders of complainant society is shown 4538 square yard equivalent to 3798.40 sq. meter. It is admitted position that co-operative housing society of B-wing was registered in 1985.

9) In view of above admitted facts in order to show deficiency of service on the part of opponents for not executing conveyance deed the complainant through its evidence affidavit and written argument have mainly tried to bring on record that as per the provisions of Section 11 and Rule 9 of the MOFA Act it is the obligatory on the part of builders/ developer to execute the conveyance deed within four months from the registration of co-operative housing society if the specifically no time is mentioned in agreement of sale for execution of conveyance deed. It is submitted that in present case admittedly the complainant society was registered in 05/12/1985 though the building of A-Wing was constructed in 1985. The opponent was recovering money for water taxes, performance agreement, maintenance charges, Share and entrance fees and charges for formation of society and stamp duty thought the agreement of sale was totally silent to that effect. Even though the complaint society was registered in year 1999, for the reason best know to the opponent he did not bother to execute the conveyance deed of property of complainant society till the complaint was filed by the complainant. Repeated request were made to the opponents even notices were issued to opponent through advocates. Even then opponent did not think it necessary to execute conveyance deed as per the provisions of MOFA. According to the complainant the opponent did it intentionally because they wanted to construct additional building and therefore the complainant was not taking any interest in request of the complainant. It is submitted on behalf of the complainant that the flat purchasers who are the members of complainant society while purchasing the flat have not only purchase the flat but have also purchased undivided open space in the property and adjacent to the property. Even then the opponents while executing agreement of sale had got executed from the members of the society that they have no right over undivided open space and they have no objection for carrying out

construction by the opponents. Mr. Samapt learned counsel for the complainant submitted that when the provision of MOFA makes it mandatory to execute the conveyance deed and to handover the property card to the complainant society. Even then the opponent got it executed in this manner which is totally in-contravention of statutory compliance. This itself speaks about unfair trade practice on the part of the opponents.

10) While criticizing the terms of agreement about the right of opponent to carry out additional construction of open space and giving up the right of flat purchasers on it, it is submitted that after the execution of conveyance deed the open space around the suit building become the property of co-operative housing society. Secondly since the provisions of MOFA Act makes it mandatory to execute the conveyance deed in favour of society that too within four months from the registration of society. Whatever contractual terms got executed by opponent in agreement of sale do not survive or superseded by the statutory terms of MOFA Act.

11) While taking us to the intention of the opponent to carry out construction in open space it is submitted on behalf of the complainant that since the open space around the suit property become the property of complainant, the opponent infact cannot carry out any construction without the consent of flat purchasers and the blanket consent obtained by the opponent from the members of complainant about his further construction in the open space is no more good consent. In support of his submissions he has relied on the judgment of Bombay high Court in the case of Ratna Rupal C.H.S. V/s. Rupal Builders in Civil Suit No. 3323/2000. Reliance is also placed on the judgment of Bombay High Court in the case of Nupoor Developer V/s. Himanshu Ganatra in Civil Appeal No. 1195/2009.

12) While replying to the submission about the delay on the part of complainant to file complaint for conveyance it is submitted that for claiming relief of conveyance which is a statutory obligation on the part of developer gives continuous cause of action to the complainant. Therefore inordinate delay on the part of opponent to execute the conveyance deed of the property of complainant society itself goes to show deficiency of service on the part of opponent.

13) While taking us to some of the constructions near the suit building it is submitted that opponent while giving information to intimation of disapproval under Section 346 of Bombay Municipal Corporation has assured the corporation to remove the construction on the site. However inspite of getting IOD the plaintiff's building the opponent did not remove some construction on the suit plot. This also shows deficiency of service on the part of opponent.

14) The complainant also claims deficiency of service on part of opponent for not giving building completion certificate of A-Wing to the complainant thought it is mandatory as per the provisions of MOFA Act.

15) In response to the said submissions the learned counsel for the opponent repeated the contents of written statement and submitted that merely because opponent did not execute conveyance deed of complainant's property that alone is not sufficient to conclude deficiency of service or unfair trade practice on part of opponent. It is submitted that complainant itself did not carry out required formalities by failure to sent true copies of agreement of individual flat purchasers. Secondly there are some other construction projects which are yet to be completed. The opponent cannot execute parties conveyance to the complainant in respect of its property only. After completing the entire project the opponent is ready to execute the conveyance of entire property. Secondly the learned counsel for the opponent while taking us to the sanction map of A & B building and agreement of sale in respect of flat purchased by the respective flat purchasers submitted that area of A & B Building shown in the sanction map is 3740.59 sq. meter. Said area is part of larger plot of land bearing No.32 which is more than 7000 sq. meter. The complainant wants to enjoy their ownership over 7000 sq. meter when complainant cannot claim the relief of conveyance because the right of complainant for conveyance is restricted to the area of the plot mentioned in the agreement and sanction map. Therefore opponents are denying any deficiency of service or unfair trade practice on their part.

15) After going through the respective submission and documents filed on record thought the opponents have challenged the status of the complainant as a consumer and jurisdiction of this forum to entertain the complaint, we do not find any substance in these objections because as per the provisions of MOFA Act it is a statutory duty of the developer to execute the conveyance of property purchased by the flat purchasers. In present case the complainant society is registered in 1985. As per Rule 9 and Section 11 of MOFA Act the opponent ought to have executed conveyance deed within 4 months from the registration of society. Failure on the part of developer to execute the conveyance is definitely deficiency of service. So also the registered society is competent to file complaint because the developer has to execute conveyance in favor of co-operative housing society and individual cannot claim conveyance deed. Therefore complainant society has every right to come before forum. Therefore we do not accept the submission of opponent.

16) The learned counsel for opponents has also practically admitted that, as per Section 11 of MOFA Act the builder has to execute conveyance deed in favour of Society within four months. He also admitted that some delay has been caused for not executing the conveyance deed and for removing the structure existing near the suit property. However, he has strongly objected for the claim of complainant to get conveyance in respect of entire plot of 7000 sq. meter. According to him complainants are entitled for the area of land mentioned in the sanction plan of A & B building as well as the sale agreement of flat purchasers of respective society. We are with learned counsel for the opponent simply because we are of

the view that merely because the area of A & B building is part and parcel of entire plot that alone cannot be ground for granting conveyance to the complainant in respect of 7000 sq. meter plot. Though it is submitted that, while constructing A & B building the F.S.I. available on remaining plot was utilized by the opponent and construction of A & B Wing was completed, therefore complainant is entitled to get conveyance on remaining open space. Since the construction of A & B wings are sanctioned by Municipal authority it is not open for the complainant to say that construction of A & B wing was not legal. Even accepting it, the complainants who have committed wrong by purchasing these flats they are not permitted to take the benefit of their own wrong by claiming ownership on remaining entire open space which was never sold to the flat holders of A & B Wing. Therefore while concluding we observe that, the opponent have committed deficiency for service by making delay in executing conveyance deed and transferring the title documents of building B in favor of complainant society. Even then the prayer of the complainant to claim conveyance deed in respect of entire plot cannot be accepted. We also hold opponents responsible for not demolishing the construction appearing on the plot which opponent has agreed to demolish. We also hold opponents responsible for not issuing building completion certificate of A-wing though as per the provisions of MOFA Act it is mandatory on the part of opponent. We further hold that complainants are entitled to get compensation for delayed conveyance. Hence we proceed to pass following order.

ORDER

- 1) Complaint is partly allowed.
- 2) It is hereby declared that opponents have indulged in deficiency of service by not executing conveyance deed in respect of A-Wing that is property of the complainant, more specifically shown in agreement of sale and to issue occupation certificate of said building.
- 3) The opponents are directed to execute the conveyance deed in respect of building A in possession of complainant more specifically shown in agreement of sale along with F.S.I. available on it and F.S.I. that would be available in future within four months from the receipt of copy of order by removing the construction available on the plot, more specifically shown in the sanctioned map of A & B Wing, and to issue building completion certificate of building "A" to the complainant.
- 4) Opponent are directed to pay compensation of Rs.5,00,000/- to the complainant within 2 months from the receipt of copy of the order towards delay for executing conveyance deed of complainant property, and to issue building completion certificate to the complainant. Failing to which opponents are further directed to pay interest on the said amount till realization of amount.

- 5) Opponents are further directed to pay Rs.15,000/- to the complainant towards cost of the complaint.
- 6) Opponents are directed to file affidavit of compliance / non compliance on or before 16/11/2014.

Place: Mumbai

Date: 30/09/2014

Vmk

(S. S. Vyavahare)

President

(S.V. Kalal)

Member