

LIBERAL TRANSLATION OF THE ORDER DATED 19/09/2008
passed by the consumer forum wherein builder has been directed to
execute the conveyance in a record 128 days from the date of filing of
the complaint. Co-operative Societies should make it a point to
approach the Consumer Courts if the builder is not executing the
conveyance. Even ad interim prayers can be prayed asking the builders
to deposit certain amount in court. This helps in building pressure on
the builder.

Thane Additional Consumer Grievances Redressal Forum,
Konkan Bhavan, Navi Mumbai.

Consumer Complaint No. 91/2008
 Date of Complaint: 10.05.2008
 Date of Decision: 19.09.2008

Environ Emanuel Co-op. Hsg. Soc. Ltd.
 Plot No. F-12/13, Sector 19-20,
 Opp. Bank of India, Belapur Village,
 Navi Mumbai -400 614.

Complainant

VERSUS

The Environ Enterprises INC,
 223-A, Vashi Plaza, Sector -17, Vashi,
 Navi Mumbai -400614.

Opponent

Before: Hon. Chairman Shri. Mahendra G. Rahatgaokar
Hon. Member Smt. Bhavana Pisal.

Counsel : **Adv. Vinod C. Sampat & Co.,** for Complainant, Present
Adv. Mohan K. Nair for Opponent, Present

DECISION

Through : Hon. Chairman Shri. Mahendra Gajanan Rahatgaokar

1. The submission of the Complainant society in brief is as follows:-

The Complainant Society is duly registered Co-operative Housing Society under the Maharashtra Co-operative Societies Act. The society consists of total Seventeen (17) members. The society is registered on 03-10-2005. About in the year 2003 the Opponent handed over the possession of the flats to the members of the society. But, till date the Conveyance Deed has not been executed to transfer the land and building in favour of the society. The society visited the opponent a number of times and placed their demand before them in writing. A legal notice in writing was served to the opponent through an Advocate. The opponent did not pay any heed to it satisfactorily. The complainant society had demanded in writing the various documents from the Opponent, but the opponent did not provide the approved building plan and other relevant documents pertaining to the society. The complainant society has filed this complaint as the opponent has provided defective service to the Complainant Society. The complainant society further prays that order may be issued to the opponent to provide Occupation Certificate, Building Completion Certificate, documents pertaining to ownership of Building to the complainant society and also to register the conveyance deed in favour of the society. Along with the complaint Annexure 2/A to 2/F is enclosed which mainly comprises of –Society Registration Certificate, Copy of Agreements, copy of Legal Notice sent through Advocate etc.

2) The Opponent has filed their reply by executing an Affidavit which is submitted as Annexure-7. Their submission in brief is as follows:

The complaint should be quashed and set aside as it has been signed by the members. The complaint has not been filed within the time limit as prescribed under the law. The flat owners have been handed over possession of the flats before March, 2003 and they were fully satisfied with it. For registration of Conveyance Deed in favour of the Complainant Society, Co-operation of all the members of the society is solicited. As on date certain flats in the said society are still in the name of the opponent as per the records of the CIDCO. It is the responsibility of the complainant society to overcome these technical hurdles. The Opponent has to recover a huge amount of outstanding dues from the members of the complainant society. In this regard, a demand notice was issued by the Opponent to the complainant society on 2nd February, 2005. But the complainant society did not respond to it. Without the co-operation of the members of the complainant society it is not possible for the opponent to register the conveyance Deed in favour of the complainant society. The opponent also has to recover the amount of outstanding dues towards the maintenance charges and the Property Tax from the members of the complainant society. If the members of the complainant society extend their co-operation, then the opponent is ready to register Conveyance Deed in favour of the society. The opponent therefore prays and submits that since there is no mistake on their part, this complaint may be squashed and set aside. The opponent has enclosed Annexures 8/1 to 8/14 along with the reply.

3) The complainant society has filed a reply by executing an Affidavit to the reply presented by the opponent which is enclosed herewith as Annexure -10 and denied the charges levied by the opponent in their written statement. The Complainant Society has submitted documents along with their reply which are marked as Annexure 11/A to 11/C.

4) The Forum heard the counsels of both the parties at the time of the final hearing. The documents submitted by both the parties were also scrutinized. To arrive at a decision, the Forum considered the following points—

Point No.1 : Whether the opponent is responsible to provide the defective service to the complainant society?

Answer : **YES**

Point No.2 : Whether the complainant society is eligible to receive compensation and the legal cost of this complaint from the opponent?

Answer : **YES.**

Clarification regarding Point No. 1:

In regard to Point No. 1, the Forum is of the opinion that the registration certificate submitted as Exhibit 2A clarifies that the complainant society was registered on 9.10.2005. The Forum is also of the opinion that as per the provisions of law as a builder it is the duty of the opponent to register the conveyance deed in favour of the complainant society.

Till date the opponent has not registered the conveyance deed in favour of the complainant society. In the written reply filed by the opponent they have taken the stand that the flat owners of the complainant society have till date not paid all their dues to opponent and are not co-operating with the opponent. Hence, it is not possible for the opponent to register the conveyance deed in favour of the complainant society. In this regard the Forum is of the opinion that in case of those flat owners who have entered into an agreement with the opponent to purchase a flat and subsequently failed to pay the amount as agreed by them as per the agreement executed between them and/or the said flat owners have failed to pay the maintenance charges to the opponent, then the opponent is free to take action separately, to recover the sale proceeds as well as amount due towards the maintenance charges as per the relevant provisions of law. The opponent therefore cannot state this as an excuse and hinder the process of registration of the conveyance deed in favour of the society. In their written submission also the opponent has stated that they are ready to register the conveyance deed, but the flat owners are not co-operating with them. In this regard the Forum is of the opinion that as per the provisions of the Act, it is the

responsibility of the builder to take initiative to register the society of flat owners. So also it is the responsibility of the builder to take initiative to register the conveyance deed in favour of the society.

All plans, documents and certificates pertaining to the construction of the building and documents pertaining to the ownership of land have to be in the possession of the builder per se. But, whenever any technical problem arises, then to overcome it if co-operation of the flat owners is required, then it is necessary for all the flat owners to co-operate with the opponent. On the basis of the documents submitted by the opponent, it is clear that the opponent has not made any efforts to get the conveyance deed registered in favour of the society. In fact, in the year 2003 it self the Opponent has handed over possession of all the flats to the respective flat owners. The society was registered in the year 2005. Even though a period of three years has elapsed since then, but the opponent has not registered the conveyance deed in favour of the society. As per the opinion of the Forum, this act of the opponent is not acceptable. As per section 2 (1) (g) of Consumer Protection Act, this act of the opponent comes under the purview of "defective services". As per the direction given in the Final Order, the opponent has to comply with all the legal procedures to register the conveyance deed in favour of the society within a period of two months from the date of the said Final Order.

Clarification regarding Point No. 2:

With regard to Point No. 2, the Forum is of the opinion that since the Conveyance Deed is not registered in favour of the society; the society has to face a lot of inconvenience. So also, the legal ownership of the building is not transferred in favour of the society till date for which the opponent is responsible. Hence, the Forum is of the opinion that the opponent should pay Rs. 7000/- as compensation to the complainant society.

The Opponent did not heed satisfactorily to the demands of the society, the complainant society was compelled to file this complaint. Hence, the opponent should pay Rs. 3000/- towards the legal cost of this complaint to the complainant society.

Hence, the following final order is passed:

FINAL ORDER

1. Complainant No. 91/2008 is admitted.
2. The opponent must register the conveyance Deed in favour of the complainant society within a period of two months from the date of the order. The members of the complainant society should co-operate with the opponent in this regard.
3. The opponent will pay the complainant society an amount of Rs. 7000/- (Rupees Seven Thousand) as compensation and an amount of Rs. 3000/- (Rupees Three Thousand) towards the legal costs of this complaint totaling Rs. 10000/- (Rupees Ten Thousand Only) within a period of two months from the date of passing of this order.
4. If the opponent fails to pay the said amount to the complainant society within the time limit as stipulated above, then the complainant society is eligible to recover the said amount with 12% interest p.a. from the date of order till the date the actual amount is received by the society from the opponent.

S/d	S/d
(Smt. Bhavana Pisal)	(Mr. Mahendra G. Rahatgaokar)
Member	Chairman

Thane Additional District Consumer Grievance Redressal Forum, Konkan Bhavan, Navi Mumbai.

Date : 19.09.2008

Place : Konkan Bhavan, Navi Mumbai.

Ref :421 Environ Emanuel Judgment for conveyance passed by consumer forum 19 09 2008- tejas 08 04 2009