

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
MAHARASHTRA, MUMBAI

Appeal no.A/16/556

Mr.Rajesh D. Kanade
Flat no.A-1103, Ganaraj Heights
Opp.Adarsh Nagar, Kolbad
Thane (West) 400 601 Appellant

Versus

1.M/s.Ganraj Group
2.Mr.Vasant Nathu Karlekar
3.Mr.Shrikant Vasant Karlekar
4.Smt.Suchita Sachin Dalvi
All 1 to 4 having address at
9, Basement Sumer Castle
Meenatai Thakare Chowk
Thane (West) 400 601Respondents

Appeal no.A/16/557

1.Mr.Ashok R.Khare
2.Smt.Kamini Ashok Khare
Both R/o.Flat no.A-902, Ganaraj Heights
Opp.Adarsh Nagar, Kolbad
Thane (West) 400 601 Appellants

Versus

1.M/s.Ganraj Group
2.Mr.Vasant Nathu Karlekar
3.Mr.Shrikant Vasant Karlekar
4.Smt.Suchita Sachin Dalvi
All 1 to 4 having address at
9, Basement Sumer Castle
Meenatai Thakare Chowk
Thane (West) 400 601Respondents

BEFORE: Justice A.P.Bhangale, President
Dr.S.K.Kakade, Member

PRESENT: Mr.V.C.Sampat-Advocate for appellants
None present for respondents

ORAL ORDER

Per Hon'ble Justice A.P.Bhangale, President

1. Heard learned advocate Mr.Vinod C.Sampat for appellants. Our attention is invited to order passed in consumer complaint no.480/2011, which was filed by Mrs.Manisha Rajesh Kanade against M/s.Ganraj Group and others –Builder /Promoter/developer, which was allowed partly and opponent nos.1 to 4 in the said complaint were directed to provide parking space on or before 01/08/2017 and if does not provide, then daily penalty in the sum of Rs.100/- was awarded until there is compliance of direction as to provide parking space. Opponent nos.1 to 4 were also directed to pay expenses of litigation in the sum of Rs.15,000/- within time until 01/08/2017, failing which, to pay interest @ 9% p.a. We have gone through the judgment delivered by the Learned District Consumer Disputes Redressal Forum, Thane, which noted the applicability of provisions of Maharashtra Ownership Flats Act, 1963 (MOFA) to the facts of the case and observed that the opponent nos.1 to 4 did not perform the statutory obligations in relation to construction, development and promotion of the building project by Builder /Promoter/developer. In that case, Learned Forum below noted that the opponent nos.1 to 4 did not dispute availability of the parking slots according to law and indulged into deficiency in service. It also noted that the building project by name ‘Ganraj Heights’ was constructed in accordance with the rules and regulations and local planning authority granted occupancy permission on 14/01/2011. In that case complainant –Smt.Manisha Rajesh Kanade had purchased flat no.1104 and complainant took possession of flat on 09/07/2008. Learned District Forum had also impleaded the Co-operative

Housing Society of the flat purchasers which was formed on 08/01/2014 in the complaint proceedings. Our attention is invited to the application made by Smt.Manisha Rajesh Kanade u/sec.12(1)(c) of Consumer Protection Act, 1986, which was allowed by the Learned District Forum on 20/10/2014. In other words, therefore complainant was permitted to seek reliefs which were common in nature, such as, failure of Builder/Promoter/developer to form Co-operative Housing Society, to construct the building with amenities and facilities as were promised in the brochure, obligation to provide stilt/covered/open parking with generator, construction of Lord Ganesh Temple, obtaining Completion Certificate in respect of building constructed, construction of Swimming Pool, solar power provision, children park, construction of office of society, to provide audited Balance Sheet to the flat purchasers and also to provide conveyance of the land inclusive of building to the society of the flat purchasers, as promised in the brochure.

2. Grievance of the appellants is that when this application u/sec.12(1)(c) was allowed on 20/10/2014 in the complaint of Smt.Manisha Rajesh Kanade in complaint no.CC/11/480 and this complaint case resulted in award, whereby Learned District Forum declared that the opponent nos.1 to 4, i.e. M/s.Ganraj Group, Mr.Vasant Nathu Karlekar, Mr.Shrikant Vasant Karlekar and Mrs.Suchita Sachin Dalvi indulged into deficiency in service in the matter of not providing the facility of car parking to the complainants. It was held that the aforesaid parties were legally under obligation to provide at least one car parking space to complainant-Smt.Manisha Rajesh Kanade and necessary direction was issued to be complied with by 01/08/2017, failing which, continuing daily penalty in the sum of Rs.100/- was imposed w.e.f. 02/08/2017, apart from litigation costs imposed in the sum of Rs.15,000/-.

3. It is on this ground it is submitted that when Learned District Forum applied its mind with reference to provisions of MOFA and passed an award

appropriately by allowing the application u/sec.12(1)(c) of Consumer Protection Act, 1986, the Learned District Forum in consumer complaint nos.479/2011 & 481/2011 strangely enough chose to dismiss the complaints on flimsy, unaccepted, unjust and illegal grounds.

4. Complainant in consumer complaint no.479/2011, who is flat purchaser in respect of flat no.A-1103 in the building 'Ganaraj Heights', while complainants Mr.Ashok Ramchandra Khare and Smt.Kamini Ashok Khare are the flat purchasers in respect of flat no.A-902 in the same building 'Ganaraj Heights'. Their grievances were identical against the builder/promoter/developer that the builder/promoter/developer did not comply with the provisions of MOFA, so as to take steps for formation of Co-operative Housing Society, to provide stilt/covered car parking, amenities and facilities as promised in the brochure, such as, providing Visual Intercom, Generator, Temple of Lord Ganesh. Builder also failed to obtain Completion Certificate of the building project and to provide necessary amenities and facilities like Swimming pool, Health Club, Solar system, children park, construction of office for the society and to provide balance sheet and also to convey the land and the building in favour of the society, as promised in the brochure.

5. It is submitted that when a construction is undertaken by any builder/promoter/developer in respect of any multi storied building, it is statutory obligation of the builder/promoter/developer to construct the building in accordance with the sanctioned plan, to complete the building under certificate of Architect or Structural Engineer concerned, to obtain occupancy permission and to take steps for formation of the Co-operative Housing Society of the flat purchasers and then to convey the land and the building to such Co-operative Housing Society consisting of the flat purchasers. When this is not done by or on behalf of the builder/promoter/developer, it is breach of duty of statutory obligation as also it amounts to

deficiency in service and/or unfair trade practice by or on behalf of the builder/promoter/developer when he failed to obtain Completion Certificate in respect of the building project as also to take the necessary steps for formation of Co-operative Housing Society, to convey the land and the building to such society of flat purchasers and also failure to perform the promises made in the brochure or in the agreement with each of the flat purchaser.

6. Learned District Forum it appears that was swayed away by unnecessary technicalities in the impugned judgment, when the complainant has chosen to pray for declaration in respect of parking arrangement and allotment claiming that as flat purchaser, complainant is entitled to get one stilt /covered parking space or one open car parking space and also insisted upon statutory obligation on the part of builder/promoter/developer to be performed, since in the decided case it appears Learned District Forum has noted that the Co- operative Housing Society is already formed of the flat purchasers, the opponents as builder/promoter/developer ought to have been directed to perform the statutory obligations as indicated above, that is to say, to complete the building project in accordance with the sanctioned plan pursuant to the agreement with the complainant, to provide all necessary and essential amenities and facilities in respect of the building project for the benefit of the Co-operative Housing Society of the flat purchasers and for the benefit of each of the flat purchasers/occupants of the building.

7. Primarily speaking, when a flat purchaser has entered into an Agreement for sale of the flat with the builder/promoter/developer, it is the duty of the builder/promoter/developer to comply with the agreement so as to complete the sale of the flat as promised under the agreement. In the present case, it is a multi storied building consisting of 12 floors and 47 flats and one refugee area flat and in the published brochure the amenities promised included

assured one car parking for each flat, stilt /covered or open. It is the case of appellants that they were not issued with the Letter of Allotment from the builder/promoter/developer.

8. In our view, when a flat purchaser has booked a flat in a multi storied building and entered into an agreement with the builder/promoter/developer to purchase a flat, for each of such flat purchased, builder/promoter/developer is under obligation to provide at least one car parking space which may be subject to the availability of covered/stilt or open car parking space inside compound of the building or when car parking spaces are constructed as per sanctioned plan, the builder/promoter/developer has to take care to construct the entire building project in accordance with the sanctioned plan, to perform the promises made in the brochure and/or agreement with the flat purchasers, to make available all necessary amenities and facilities as promised including the car parking for each of the flat purchaser occupying the flat in the building. It is further necessary for the builder/promoter/developer to take care to convey the land and the building to the registered Co-operative Housing Society, which has to be formed consisting of all the flat purchasers in the building. Such Co-operative Housing Society which is formed by the builder as performance of statutory obligation flowing from the MOFA, then the society concerned would be handed over the administration and management of the building for larger interest of flat purchasers/occupants residing in the building and depending upon number of car parking spaces available, the society concerned ought to take care to allot remaining car parking spaces under its control after allotment of car parking spaces by the builder in accordance with agreement with each of the flat purchasers so that remaining flat purchasers would also get essential amenities of the car parking spaces in the building. The parking space for car has become essential need in

crowded cities.

9. It is a common experience in the city of Mumbai or in Suburban area as also in over populated Districts in the State of Maharashtra, such as, Thane, Nasik, Pune, etc. that car parking became basic and essential need for the owner of the 4 wheeler motor vehicle purchaser, who is occupying the flat in the multi storied building and as far as possible, it shall be the duty of the Co-operative Housing Society concerned to accommodate all the flat purchasers providing them with at least one parking slot per flat in the building. In a given case if car parking slots are lesser than the number of flat purchasers residing in the building, Society may find via media to allot the car parking spaces by rotation to the remaining flat purchasers waiting for their turn to occupy or use car parking slots for period allotted as per resolution by society. Normally it is for the builder/promoter/developer to allot free car parking space for each of the flat purchaser in the building. Hence, it is primary obligation of the builder/promoter/developer to allot a car parking space to each flat purchaser who had entered into an agreement with the builder to occupy the car parking space. However, when society is formed and it is a registered Housing Society in whose favour building and the land is conveyed by the builder/promoter/developer, the liability would be transferred to the Co-operative Housing Society concerned to follow the principles of natural justice and use good conscience of managing body Co-operative Housing Society to ensure that each of the flat purchaser in multi storied building under its management and control shall get essential car parking space amenity. Non-observance of the above principles by opposite party would amount to deficiency in service actionable under the Consumer Protection Act, 1986.

10. In this view of the matter, we pass the following order:-

ORDER

1. Both the appeals bearing nos.A/16/556 & A/16/557 are allowed with direction that opponent - builder/ promoter/developer shall perform its

statutory obligation as contemplated under Maharashtra Ownership Flats Act, 1963 (MOFA) in the matter of completion of the building, occupancy permission, allotment of car parking space, etc. In the event, builder/ promoter/ developer has already conveyed land and building in favour of Co-operative Housing Society, such Co-operative Housing Society in management or control of the building shall take over the responsibility of builder/promoter/developer in the matter of completion of statutory obligations under MOFA.

2. Accordingly, Consumer complaint bearing nos.479/2011 & 481/2011 are partly allowed. Issue directions against opponents as prayed for by the complainants, accordingly.
3. **It is declared that opponents have indulged into deficiency in service and unfair trade practice in the matter of non-allotment of parking space and arrangement to provide at least one covered/stilt car parking space or open car parking space to the flat purchasers/complainants. We direct the opponents to provide at least one stilt/covered car parking space or one open parking space to the complainant/s in above mentioned complaints within 30 days from the date of this order, failing which, opponents shall be liable jointly and severally to pay penalty in the sum of Rs.100/- per day until compliance of this direction.**
4. **Opponents shall also provide battery back-up for the lifts as essential service and amenities in respect of maintenance of the building and obtain Completion Certificate from the Local Town Planning Authority in respect of building project namely ‘Ganraj Heights “A” wing.**
5. We make it clear that in case builder/promoter/developer has already handed over the building and the land to the management and control

of the Registered Co-operative Housing Society, it shall be open for the complainants/flat purchasers to insist upon the said Co-operative Housing Society duly registered consisting of flat purchasers through it's management to comply with rest of the statutory obligations as also contractual obligations which the flat purchasers had with the builder/promoter/ developer, in the matter of provision of amenities, services and car parking in campus/in the compound of the building.

6. We also award compensation on account of mental and physical harassment of complainant/s in the sum of Rs.1,00,000/- in each complaint payable by the opponent/builder/promoter/developer to the complainant/s and litigation costs in the sum of Rs.25,000/- in each case.

7. Impugned order in each appeal is set aside accordingly.

8. Both the appeals are disposed of as partly allowed accordingly.

9. Free Copies of the order be furnished to the parties.

Pronounced on 3rd December, 2019.

[Justice A.P.Bhangale]
President

[Dr.S.K.Kakade]
Member

Ms