

**Addl. Consumer Disputes Redressal Forum, Mumbai Suburban District
Admin Bldg., 3rd floor, Nr. Chetana College, Bandra-East, Mumbai-51**

Complaint Case No. CC/11/207

1. AMBIKA SIDDHU CHS LTD

PLOT NO.58, JAGDUSHA NAGAR, RIFLE RANGE
ROAD, GHATKOPAR (W), MUMBAI 400086

.....Complainant(s)

Versus

1. CHANDRAKANT V SHETYE

C-48, INDRADEEP CHS LTD, LBS MARG,
GHATKOPAR (W), MUMBAI 400086

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. S.D.MADAKE PRESIDENT
HON'BLE MR. S.V.KALAL MEMBER**

For the Complainant:

For the Opp. Party:

Dated : 15 Oct 2016

Final Order / Judgement

PRESENT

Complainant by Adv.Vinod Sampat, present.

Opponent by Adv.Bipin Joshi present.

ORDER

(Per- Mr. S. D. MADAKE, Hon'ble President.)

1. The complainant is a housing society registered under Maharashtra co-operative societies Act, 1960 on 04/08/1986 having 46 members. The complaint initially was filed against opponent No. 1 Chandrakant Shetye ,Opp. 2 Rajeshri enterprises and Praful Dedhia who is a partner of Ghatkopar landdevelopment corporation, on 20/2/2009 for deficiency in service. The said complaint was decided bythis forum on 25/4/2014. The operative part of the order is reproduced below.

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1. The said order was initially challenged before Hon'ble Maharashtra state consumer disputes redressal Commission by FA No.A/14/451 which was dismissed on 23/2/2015. The

opponent no.1Chadrakant Shetye filed Revision petition no.1379/2015 before Hon'ble National Consumer Disputes Redressal commission. The Nationl commission with consent of parties impleaded industrial development and investment company as on opposite party to the complaint well as Ghatkopar land development corporation as the party tocomplaint

2. The Hon'ble National Commission remitted the matter back to this forum for deciding the complaint afresh after hearing the foresaid newly impleaded opposite parties, within three months of the newly impleaded parties appearing before forum.
3. The complainant stated that opponent no.1 purchased the property from Rajshiree Enterprises on 05/04/1979 admeasuring 1705 Sq. meter and shri Chandrakant Shetye constructed flats as per agreement dated 19/10/1984
4. The complainant stated that opponent no.1failed to register the sale deed on the date of sale. It is submitted that members of society are required to pay more amount for registration due to negligence of Shri. Chandrakant Shetye.
5. The complainant stated that opp no.1 failed to obtain building completion certificate and execute conveyance deed in favour of the society. The compliant is unable to undertake the redevelopment of the society due to deficiency in service.
6. The complainant alleged that opp no.5 entered into agreement with Ghatkopar land Development Corporation on 11/04/1972 the opp no.4 entered into an agreement with Rajeshri Enterprises on 22/3/1978 & opp no.2 entered agreement on 05/04/1979, in favour of shri. Shetye. It is alleged that no sale deeds were executed in respect of the above said three transactions.
7. The Complainant claimed compensation of Rs.15000000 /- for loss due to deficiency in service. It is prayed that opposite parties to pay full stamp duty on the agreement dated 11/4/1972, 23/3/1978 & 5/4/1979 as per provision of Maharashtra Stamp Act, 1958 read with the Indian Registration Act 1908.
8. The opposite party 1 filed written version & denied the contents of the complainant. It is alleged that the complaint is barred by limitation. It is stated that occupation certificate was issued on 12/3/1987 to the knowledge of complainant society.
9. The opponent alleged that on 24/10/2008 meeting was taken by members of society & opp no.1 regarding redevelopment of society and members of society agreed with proposal for the same made by Shri. Shetye. The complainant never claimed the completion certification & conveyance deed during all those days from opp no.1.

10. The opposite parties 1 to 3 alleged that it is not required to register agreements dated 11/04/1972, 23/03/1978 & 05/04/1979. They alleged that in accordance with the then prevailing law the proper stamp duty is paid.
11. We have carefully perused the complaint, written version filed by opposite parties, documents produced on record by both sides, affidavits in the form of evidence, as well as written submission of both parties.
12. We have heard at length Ld. Advocate Shri .Vinod Sampat as well as Ld. Advocate Shri. Bipin Joshi, in the light of the order of Hon'ble national commission dated 09/02/2016.
13. The Hon'ble national commission in Para No. 2 of the order observed that “ *After completion of construction on the aforesaid land, the flats were handed over to the member of society but neither the completion certificate has been obtained nor conveyance deeds in favour of the society has been executed*” .
14. The documents indicate that member of the society purchased flats as per agreement dated 19/10/1984 and society having 46 member was registered on 04/08/1986. As per law developer is under an obligation to execute conveyance deed within four month in favour of society from the date of registration, we have perused the agreement dated 19/10/1984 which stated as per clause 36 the vendor is under obligation to execute conveyance. The flats purchasers have paid full price of the flat, as per agreement till this date opponent no .1 failed to execute conveyance without proper and justifiable reasons.
15. The complainant alleged that opponent no.1 failed to comply obligation under MOFA. The Ld. Advocate for complainant Shri .Vinod Sampat argued that as per section 11 of the Act, which provides that, a promoter shall take all necessary steps to complete his title and convey to the organization of person who take flat which is a society and deliver documents of title.
16. The learned counsel Shri. Vinod Sampat submitted that opposite parties are duty bound to get the agreement dated 11/04/1972 executed between Ghatkopar Land Development Corporation and Industrial Development and Investment Co. as per the provision of Indian Registration Act. He also emphasized necessity to execute agreement dated 22/03/1978 as well as 05/04/1979 as per Indian Registration Act.
17. The learned counsel Shri. Bipin Joshi argued that agreement dated 11/04/1972, 23/03/1978 and 05/04/1979 have been done in accordance with the then prevailing law, and the proper stamp duty is paid. He argued that all opposite parties jointly and severally required to execute deed of conveyance in favour of society. He further argued that terms of flat purchase agreement as well as terms and condition of 3 agreements are binding upon complainant.

18. We have very carefully considered the oral submissions by both senior advocates. We are of the opinion that opp .no.1 is under an obligation to convey title in favour of society. We feel that opp.no.1 has first to ensure that he has title over the property, which he intend to convey in favour of society. As per law no person can transfer better title than he himself possess.
19. We are of the considered view that opponent no. 2 to 5 should co-operate opponent no.1 for transfer of title in his favour by executing a transfer of ownership in favour of Chandrakant Shetye.
20. However considering fact of case we do not agree with Adv. Vinod Sampat, stating that opposite parties are liable to execute three agreement duly stamped and registered . We are of the view that, Opponent no. 2 to 5 do not owe any obligation in favour of complainant society. Party 2 to 5 have not any contractual or statutory obligation in favour of complainant.
21. We also do not agree with submission of Adv. Bipin joshi when he stated that term and condition of 3 agreements are binding upon complainant, as complainant or any of the 46 member of society were not parties to any of the three agreements dated 1972,1978 & 1979.
22. In view of legal position, we hold that opp.no.1 is under an obligation to transfer title in favour of society. We are of opinion that equity demands that opp nos.2 to 5 should co-operate Shri Chandrakant Shetye for transfer of title in respect of the property in his favour by assisting him. Their cooperating is needed to opp. no. 1 so that he will be in a position to transfer title in favour of society as required under Sec.11 MOFA.
23. The Complainant society has claimed compensation to the amount of 1500000/-. This forum by order dated on 25/04/2014 awarded the compensation amount of Rs.100000. The Hon'ble National Commission directed Shri. Chandrakant Shetye to pay compensation of Rs100000/ to complainant as ordered by District Forum.
24. The complainant alleged that due to negligence of opponent as per clause 36 of agreement, Flat purchasers have to pay the registration charges. The Hon'ble National Commission in Para 5 of the order, observed that society will have to pay stamp duty only for one transaction and that will be calculated in accordance with the flat buyers agreement.
25. The complainant alleged that, completion certificate is not issued by opponent which is observed by Hon'ble National Commission in para No.2 of order as well as in order District Forum. The opponent has not alleged that, any unauthorized construction has been raised by any one of 46 members of society.

26. In the result, we pass the following order

ORDER

1. complaint No.207/2011 is partly allowed.
2. The opponent no.1 is directed to execute conveyance deed with all benefits in TDR/FSI etc. for property situated at plot no.58 known as 'Jagdusha Nagar' rifle range Ghatkopar (W) Mumbai-400086 as fully described in the complaint.
3. The opponent no.1 is directed to get the property card transferred in the name of complainant society.
4. The opponent no.1 has deposited the amount of compensation as per order of Hon'ble National Commission to the amount of Rs. 1,00,000/- (One Lakh only). Hence no separate order is passed for compensation.
5. The opponent no. 1 is directed to obtain completion certificate and occupation certificate from competent authority within four months failing which he will have to pay Rs. 1,000/- (One Thousand Only) per day, till obtaining these two certificates.
6. No order as to cost.
7. Copy of this order be sent to both parties.

**[HON'BLE MR. S.D.MADAKE]
PRESIDENT**

**[HON'BLE MR. S.V.KALAL]
MEMBER**