

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1086 OF 2014

(Against the Order dated 13/08/2014 in Complaint No. 70/2007 of the State Commission
Maharashtra)

1. PATTATHU BROTHERS

R/o Pattathu House, 43-C, Kalina-Kurla Road, Santacruz
(East)

Mumbai - 400 029

.....Appellant(s)

Versus

1. ARUNODYA CO-OPERATIVE HOUSING
SOCIETY LTD.

Arunodaya Apartments, Servey No.312, Behind K.E.S.
School, Manipada, Santacruz (East)

Mumbai - 400 098

Maharashtra

.....Respondent(s)

BEFORE:

HON'BLE MR. PREM NARAIN, PRESIDING MEMBER

For the Appellant : Mr. Uday Wavikar, Advocate with
Mr. Vikas Nautiyal, Advocate

For the Respondent : Mr. Vinod C. Sampad,
Advocate

Dated : 20 Jan 2016

ORDER

1. This appeal has been filed by Pattathu Brothers, against the order dated 13.08.2014 of the Maharashtra State Consumer Disputes Redressal Commission, (in short 'the State Commission').
2. Brief facts of the case are that complainant is a Co-operative Housing society which has filed a Consumer complaint against the Opponent builder developer alleging deficiency in service for not attending to construction defects, non-compliance of statutory obligations under the provisions of Maharashtra Ownership of Flats Act, 1963 (hereinafter referred to as "MOFA" in short) and to transfer right, title and interest by conveying the property. Complaint was admitted and at later stage Complainant moved an amendment application to implead the original Landlord as Opponent. Though amendment application was allowed by order dated 21st December, 2011, the Complainant failed to carry out the amendment on the ground that some of the previous co-owners were not alive. Therefore, the complaint was processed and adjudicated in its original format.

3. The State Commission finally decided the complaint on 13.08.2014 as under:-

“(i) Complaint is partly allowed.

(ii) The Opponents builder developers are directed to execute deed of conveyance, to transfer right, title and interest in the building and land to the Complainant Society within a period of four months from the date of this order, failing which Rs.1,000/- will be payable to the Complainant Society per day till compliance of the order.

(iii) The Opponent Builder developers are directed to reimburse amount of Rs.19,76,174/- as listed below with interest @9% per annum from the date of filing of this consumer complaint i.e. from 04.05.2007 till realization within a period of 60 days, failing which rate of interest will be enhanced to 12% per annum till realization.”

4. Heard the learned counsel for the appellant as well as for respondent and perused the documents carefully.

5. Learned counsel for the appellant argued that *whether the separate grievance of the individual flat owners pertaining to their flats, possession of which had been delivered more than four years prior to the complaint could have been entertained by the State Commission even without an application for condonation of delay and whether the State Commission was right in holding the appellant for alleged deficiency in service by ignoring the negligence of the members of the Society who in right time did not pay adequate stamp duty on the agreements to sell and giving impossible task of registering the conveyance deed now which is no longer executable on the strength of the power of attorney due to the operation of law.*

6. Learned counsel for the appellant stated that he is willing to register the conveyance deed. However, the Registrar was not allowing the same. It was duty of the complainant to have included land owners as party in the consumer dispute. Even after being allowed by the State Commission, the complainant failed to include the original land owners as party in the consumer complaint case. This was the basic defect in the consumer complaint but still the State Commission decided the case and ordered the conveyance deed to be registered. Under the changed law, the unregistered power of attorney does not empower the builder/developer/appellant to register conveyance deed. Hence, the order of the State Commission is bad in law and cannot be implemented.

7. Learned counsel for the respondent states that the society members have purchased flats from the appellant and they have paid the money to the appellant. Hence, it is responsibility and duty of the appellant to register the conveyance deed for all the members giving them ownership rights. If the appellant has worked on the basis of an unregistered power of attorney, which is against the law, then he is responsible for this shortcoming and he has to suffer the consequences. An illegal act cannot absolve him of his responsibility as a builder/developer. If the appellant really wants to comply with the order of the State Commission and wants to register the conveyance deed, he can always approach the original land owners and their legal heirs if deceased and do the needful in the matter. He can even register the power of attorney with due formalities. It is not possible for the society members or the society to search for the original land owners who executed power of attorney to the appellant. The society and its members have contract with the appellant only, therefore, appellant is only responsible for registering the conveyance deed.

8. After the arguments were heard, learned counsel for the appellant also submitted copy of the judgment of Hon'ble Supreme Court in the case of **Kamlesh Aggarwal Vs Narain Singh Dabbas & Anr., (2015) 42 SCD-374** along with copy of the order dated 11.3.2015 of the Maharashtra State Consumer Disputes Redressal Commission in Complaint Case No.CC/07/105. It has been said that based on the above referred judgment of the Hon'ble Supreme Court, Maharashtra State Commission has ordered on 11.3.2015 in consumer complaint directing the Registrar of the State Commission to execute the conveyance for and on behalf of the opponents in favour of the complainant society. The learned counsel had pleaded in the arguments that the State commission should have ordered the Registrar to register the conveyance deed.

9. From the facts of the case, it is clear that there is a contractual agreement between appellant builder and society members. The members of the society have paid full amount to the appellant as cost of flats and have taken possession thereof from the appellant. For their ownership rights, members definitely need conveyance deed in their favour duly executed by the developer/appellant. The purchase process is not complete until the conveyance deed is registered in favour of the purchasers. Thus, the argument of the appellant that the consumer complaint was barred by limitation, is not tenable. It was not necessary for the society to make original land owners as party in the consumer dispute because the society did not have any privity of contract with the original land owners. From this angle also, I don't find any lacuna in the processing of the consumer dispute by the State Commission.

10. Now, the appellant has shown legal difficulty that he has an unregistered power of attorney by the original land owners in his favour and on that basis he cannot register the conveyance deed in favour of the society members who are prospective flat owners. For this situation, it is only the appellant who himself is responsible as he did not get the power of attorney registered perhaps due to stamp duty or any other reasons best known to him. But the flat owners/society members cannot be allowed to suffer because of his mistake. It is seen that the appellant has inter alia prayed for the following relief in his appeal:-

"To call for the records and proceedings from the Hon'ble Maharashtra State Commission, Mumbai and after perusing the same and hearing the parties allow the Appeal, quash, set aside and or modify the order dated 13/08/2014 declaring that the Opposite Party (Appellant) is not liable to pay any monetary claim to the Society and further direct the Complainant to go in for Deemed Conveyance under the provisions of MOFA or Decree/Award may be passed that the Respondent society may be declared as the owners of the property and that Award/Decree may be treated as Conveyance for transfer of title of the property in the name of the society with direction to the Registrar office to accept the same and register it, as there is no deficiency in service on the part of the Opposite Party (Appellant)."

11. The suggestion given in the prayer for getting ownership rights to the society members is for the appellant himself to pursue as the consumer forum cannot order under the provisions of any other Act, in this case, the Maharashtra Ownership of Flats Act, 1963 (MOFA Act). I am not aware about the finality of the order of the State Commission passed in Consumer Complaint No.CC/07/105 as cited by the appellant. I have my reservation whether Registrar of the State Commission can register conveyance deed on behalf of the opponents in favour of the society. The State Commission has rightly ordered Rs.1000/- to be paid by the appellant to the society till the conveyance deed is registered as this will put some pressure on the appellant to get the conveyance deed registered as early as possible.

12. So far as the order of the State Commission in respect of reimbursing an amount of Rs.19,76,174/- is concerned, the State Commission has already given its break-up in its judgment itself. The learned counsel for the appellant has not stated as to which items are not justified. In fact, the whole emphasis of the appellant has been on his inability to register the conveyance deed inspite of his willingness to do so. In these circumstances, I do not find any force in the argument of the appellant that the award of payment of damages to the tune of Rs.19,76,174/- is not justified.

13. Based on the above, discussion, I do not find any ambiguity, illegality or material irregularity in the order dated 13.08.2014 of the State Commission, which requires any interference of this Commission. Accordingly, the appeal is without merits and is hereby dismissed.

14. No order as to costs for this appeal.

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PREM NARAIN
PRESIDING MEMBER