

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

Complaint Case No. RBT/CC/12/125

1. JAYSHREE C.H.S. LTD,
PADMA NAGAR, CHIKUWADI, BORIVLI-WEST,
MUMBAI-92.
2. VIJAY COTTON & FIBRE CO.
THRU SHANTILAL SHAH, PARTNER, DHAN
NIWAS, GR. FLOOR, 180, SHRADHANAND ROAD,
VILE PARLE-EAST, MUMBAI-57.

.....Complainant(s)

Versus

1. M/S. PADMA DEVELOPERS
13, DATTANI TRADE CENTRE, CHANDAVARKAR
ROAD, BORIVLI-WEST, MUMBAI-92.
2. PADMABAI RAMCHANDRA KENI
PADMALAYA-C, SHIMPOLI VILLAGE, BORIVLI-
WEST, MUMBAI-92.
3. JAYWANT RAMCHANDRA KENI
PADMALAYA-C, SHIMPOLI VILLAGE, BORIVLI-
WEST, MUMBAI-92.
4. MOHAN RAMCHANDRA KENI
PADMALAYA-C, SHIMPOLI VILLAGE, BORIVLI-
WEST, MUMBAI-92.
5. PRAKASH RAMCHANDRA KENI
PADMALAYA-C, SHIMPOLI VILLAGE, BORIVLI-
WEST, MUMBAI-92.
6. RAMESH RAMCHANDRA KENI
PADMALAYA-C, SHIMPOLI VILLAGE, BORIVLI-
WEST, MUMBAI-92.
7. LATA RAMCHANDRA KENI
PADMALAYA-C, SHIMPOLI VILLAGE, BORIVLI-
WEST, MUMBAI-92.

.....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 : 26 Sep 2016

Final Order / Judgement

PRESENT

Complainant by Adv. Shri. Vinod Sampat present.

Opponent by Adv. Shri. Wankhede present.

ORDER

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

1. The Complainant has filed complaint against opponents under s. 12 of the Consumer Protection Act, 1986 for deficiency in service.
2. The complainant is a co-operative housing society registered under the provisions of Maharashtra Co-operative Societies Act, 1960 vide registration no. Mum/WR/HSG/TC/13425/6-07 dated 15th May, 2006. The opponent no.1 is a registered partnership firm under Indian Partnership Act, 1932 engaged in having construction. The opponent no. 2 to 7 are partners of the said firm as well as owners of the land as shown property card annexed with the complaint. There are 64 members of the complainant society.
3. The complainant stated that opposite parties are guilty of not exercising the deed of conveyance in favor of society and are violating the objections imposed by Maharashtra Ownership Flats Act, 1963 as a builder.
4. The complainant stated that flats were purchased by flat purchasers from opponent no.1 in 2003 the society was registered in 2006. The complaint called upon the opponent to perform statutory obligation by notice through Adv. Vinod Sampat dated 13-8-2011. The opponent agreed for execution of conveyance wide reply dated 2-09-2011 there were exchange of negotiation for finalizing the conveyance.
5. The complainant alleged that original flat purchaser executed the agreements separately with builder and purchased flats the copy of agreement dated 10.4.2003 executed in favor of one of the flat purchaser is filled on record.
6. The complainant stated that, as per MOFA and rules opposite party No. 1 has to maintain certain registers, however opponent failed to provide information stated in the registers for reasons best known to opponent.
7. The complainant alleged that, the benefits of the changes regulating in FSI/TDR after purchase of flat should exclusively belong to society.
8. The complainant stated that with the passage of time the stamp duty authorities have increased market value. The society is liable to pay amount for registration and stamp duty. The financial loss on account of negligence of opponents should be incurred by them.
9. The complainant stated that flats were purchased by the original flat purchasers from opposite party No. 1 and nothing prevented opponent from insisting registration of individual agreements and executing conveyance of property. It is alleged that, opposite parties can create third party rights in open space as property card stands in the name of Opponent No. 4 to 9.
10. The complainant stated that opponent failed to obtain building completion certificate.
11. The complainant stated that, possession of flats to the members was handed over in 2003. The opponents demanded various amounts under various heads i.e. open parking charges, garden charges, share of taxes, however opponents failed to perform statutory obligation of giving accounts.
12. The complainant stated that, opponent neglected to form society of flat purchasers as a result, occupants of society were forced to spend additional amount towards formation of society in 2006.

13. The complainant in para No. 22 stated, (as per cl-2 of), when the flat purchaser is purchasing a flat from the builder, he is not paying money just for the flat but also for open space in the property.
14. The complainant stated that contractual obligations cannot supersede the statutory obligations. The opponents are liable to ensure that the property is transferred in favour of the legal entity. The opponent are liable also to submit all property documents to society.
15. The complainant stated that , members of society have suffered immensely for many years which entitles them to claim compensation.
16. The complainant prayed that opponents be declared as guilty for deficiency in service. It is further prayed that opponent parties be directed not to create third party interest in the property. The complainant further prayed to direct opposite parties to obtain occupation certificate, to pay increase of stamp duty, submit Building completion certificate, transfer the property in the name of society by transferring the property card to execute the conveyance deed, give details of flats sold , to submit original documents of title. It is lastly prayed that declaration be made that benefits of extra FSI/TDR set back available on the plot would exclusively belongs to society.
17. The complaint was admitted by the forum on 2.4.2012. The opponents filed written statement on 1.8.2012 resisting all allegations made in complaint and stating that complaint is fake, false, frivolous, baseless, vague and bad in law.
18. The opponents stated that, this forum has no pecuniary jurisdiction to decide the complaint.
19. The opponents stated that building known as Jayashree Co-operative housing Society was constructed by them as per approved plans. The opponent submitted that construction was completed in 2005 and society was formed in 2006 by opponents and not by complainant.
20. The opponents stated that, sale agreement annexed to complaint is duly stamped and registered and amount has been paid by members of society as per cl.17 of agreement. It is alleged that they are ready and willing to submit documents as demanded by society.
21. The opposite party sated that, they are ready and willing to execute conveyance as prayed by society, however complainant failed to co-operate by not furnishing the details of members, with individual agreements, stamp duty etc. It is alleged that they attended two meetings with society, which shows their readiness and willingness to execute deed and perform obligations.
22. The opponents sated that they have not created third party interest in the open space of society and they have always safeguarded the interest of society.
23. The opponent submitted that society prepared the extract of the meeting as per their own convenience and got it signed under unconscionable circumstances form representative of opponent.
24. It is prayed that complaint be dismissed with cost.
25. We have heard learned counsal Shri. Vinod Sampat for complainant and Ld. Counsal Shri Wankhede for opponents at length. Perused all the documents on record.
26. The opponent submitted that , this forum has no pecuniary jurisdiction to entertain the present complaint relying on the legal notice dated 13.6.2011 issued by complainant to opponents, which is also sent to various authorities for taking appropriate action against opponent. We have perused the said notice as well as relief claimed by complainant. The prayer is made for compensation of Rs.19,95,000/- (Nineteen laks ninety five thousand). There is no prayer for recovery of possession of property. Therefore , we hold that, forum has pecuniary jurisdiction to entertain the present complaint.
27. The complainant is a society , registered as per Maharashtra co-operative society Act 1960. The individual agreements with flat purchasers were entered in 2003

- and Society is registered in 2006. The building was completed in 2005. Both parties alleged that, steps for registration was taken by them. We are of view , that both parties performed their obligation and society was registered.
28. The documents on record indicate that, both parties hold meetings for the purpose of execution of conveyance deed. According to opponent parties , they are ready and willing to execute conveyance, however the complainant has not co-operated for the same by furnishing the details of members with individual agreements.
29. The record shows that, agreements are entered between the builder and flat purchasers. This shows that promoter has complied the requirement of section 4 of MOFA 1963. As per section 11 of the said act, promoter is under an obligation to take all necessary steps to complete his title and convey to the society, which is registered as per Maharashtra co-operative societies Act 1960. The promoter is also under an obligation to file a copy of conveyance execute in favour of society, with competent authority under se.11 of ac.
30. We are of the view , that opponent parties failed to execute conveyance deed, though agreements were entered during 2003, construction was completed in 2005 and society was registered in 2006. As a result , the complaint. Society consisting of members were subjected to inconvenience during for a period of a decade.
31. We are of the view that, opposite parties have to comply the requirement of submitting the occupation certificate and building completion certificate as claimed by complaint. The documents on record as well as evidence adduced, do not show that, opposite parties have created third party interest as alleged by complainant.
32. In the result , considering the facts and circumstances of the case, we are of the view that, opposite parties are guilty for deficiency in service. The complainant was subjected to financial loss due to increase in stamp duty as well as registration charges during these ten years. The complainant is entitle for compensation of Rs.2,00,000/- (Two lakh) which is reasonable as per law laid down under section 73 of Indian contract Act. 1872.
33. The opposite parties are liable to submit all the title deeds as well as original documents relating to construction. They are also liable to transfer the property in the name of complainant society by transferring the property card, we also hold that benefits of extra FSI/TDR available belongs to society as claimed.
34. In the result we pass the following order.

ORDER

1. RBT Complaint No. 125/2012 is partly allowed.
2. The opposite parties are directed to execute the conveyance deed with respect to the property mentioned in the agreements within four months in favour of complainant society, failing which opposite parties shall pay Rs. 500/- per day, till the date of execution of conveyance deed.
3. The opposite parties are directed to submit the documents i.e. Building completion certificate and Occupation certificate of the property, on which the complainant society is constructed.

4. The opposite parties are directed to pay compensation of Rs. 2,00,000/-
(Two lakh) for inconvenience and mental agony to complainant.
5. No order as to cost.
6. Copy of this order be sent to both parties.

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

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