

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

Complaint Case No. CC/13/78

1. THAKKARA JOSEPH JEORGE
C-101, VENUS CHS, SUNCITY COMPLEX, A S
MARG, POWAI, MUMBAI 400076

2. थक्कारा फिलोमिना जॉर्ज

सी-101, व्हीनस हौ सो लि, सनसिटी कॉम्प्लेक्स, ए.एस.मार्ग,
पवई, मुंबई 400076

.....Complainant(s)

Versus

1. VENUS CHS LTD
THROUGH SECRETARY, 503, A WING, SUNCITY
COMPLEX, A S MARG, POWAI, MUMBAI 400076

2. रदद

रदद

3. मे.सन सिटी हौसिंग

101/बी, प्रशांत अपार्टमेंट, आदि शंकराचार्य मार्ग, पवई, मुंबई
400076

4. श्री.प्रशांत शर्मा, भागीदार

मे.सन सिटी हौसिंग, 3 रा मजला, मिलेनियम टॉवर्स,
आयओसी पेट्रोलपंपाच्या मागे, पवई, मुंबई 400076

5. श्री.जतिन दहिसरीया, भागीदार

सन सिटी हौसिंग, जी.एच.पी.ग्रुप, 3 रा मजला, मिलेनियम
टॉवर्स, आयओसी पेट्रोल पंपाच्या मागे, पवई, मुंबई 400076

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. S S VYAVAHARE PRESIDENT
HON'BLE MR. S.V.KALAL MEMBER**

**For the
Complainant:**

तक्रारदार स्वतः हजर.

**For the Opp.
Party:**

सा.वाले करीता प्रतिनिधी श्रीमती. रोझा जॉन,
अध्यक्ष हजर.

ORDER

PRESENT:-

Complainant by Adv. Vinod Sampat

Opponent No.1 by Adv. Menkudle

Opponent No. 2 to 4 Ex-parte

ORDER

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

- 1) The complainants have filed this complainant under Section 12 of the Consumer Protection Act, against the opponents for getting compensation alleging deficiency of service on their part.
- 2) Facts giving rise to the present complaint in short are as under.
- 3) The opponent No.1 is co-operative housing society registered under the provisions of Maharashtra Co-operative Society act, 1960. The opponent No.2 deals in construction business under the name & style M/s. Sun city Housing and opponent No.2 has constructed the building of opponent No.1. Opponent No.3 & 4 are the partners of opponent No.2.
- 4) The complainants are the bonafide purchasers of flat No. C-101 situated in the building of opponent No.1 and they are also members of opponent No.1. It is the contention of the complainants that they are the members of opponent No.1 and thought they are entitled for car parking, the opponent No.1 has deliberately did not allot any car parking to them. On this issue the basic dispute between the complainants and opponent No.1 is pending. The complainants have entered into lot of correspondence. The complainants have also intimated the act of the opponent to the Deputy registrar of co-operative society. Being aggrieved to that the office bearers of opponent No.1 started harassing the complainants by making false allegations against them, by making complaints against them to the various authorities and by issuing notices to the complainants by raising demands for outstanding dues.
- 5) It is further contention of the complainants that initially the opponent No.1 has kept box of garbage outside the premises of the society. However, the opponent No.1 and its office bearers in order to harass and torture the complainants have kept those dust bins under the premises of the complainants. Due to which the complainants and its family members are facing inconvenience, nuisance. Besides that, the opponent No.1 has illegally erected collapsible gate and tin roof in the open duct area. In respect of keeping of garbage bins near the premises of the complainants repeated correspondence was made by the complainants with opponent No.1. Even complainants were made to various authorities. However, the opponent No.1 did not remove the garbage tins.
- 6) It is further contention of the complainants that office bearers of the opponent in order to harass the complainants and to disturb their mental peace instigates the watchman who sent unknown strangers to the complainants for cleaning purpose. The office bearers of opponent No.1 are also not allowing the complainant to inspect the documents pertaining to opponent No.1 and do not provide the copies of the documents. Besides that, the opponent No.1 has made illegal changes in the

managing committee. It is further contention of the complainants that office bearer of the opponent No.1 have also entered into criminal conspiracy with police due to which even police authorities not entertaining the complainants. The other flat holders as well office bearers of opponent No.1 are have also ill treated and assaulted the complainants for which N.C. was registered against them. Some of the flat holders have carried out illegal construction and illegally extended the area of their premises for which inspite of repeated correspondence the opponent No.1 did not take any action against them. It is also contention of the complainants that office bearers of the opponent are making false allegations against the complainant in respect of misusing of lift. It is further contention of the complainants that, in the month of February-2010 the water valve leading to their flat has been shut down deliberately by the representative of opponent No. 1 the complainant have verified this fact in presence of watchman. For this fact also the opponent No.1 did not take any cognizance.

7) Besides that it is further contentions of the complainant that, the office bearers of opponent No.1 in collusion with opponent No.2 to 4 are harassing the complainants. Therefore only the opponent No.1 did not take any actions against opponent No.2, though opponent nNo.2 has not provided occupation certificate, building completion certificate & conveyance certificate. Therefore the alleged act on the part of opponent No.1 to4 amounts to deficiency of service and unfair trade practice. By this complaint the complainants have requested for getting direction to opponents for not keeping garbage bins near the flat of the complainants, for not restricting the entry on the terrace, for providing parking space to the complainants and for getting conveyance certificate, for taking action against the flat holders who have carried out unauthorized construction in the building, for removal of collapsible gate wrongly constructed by opponent No.1 and for getting compensation for mental agony and cost of the complaint.

8) Opponent No.2 to 4 remained absent inspite of service summons and therefore matter was proceeded ex-parte against them. The opponent No.1 has resisted the complaint by filing its written statement. Wherein, it is contended that, complainant's complaint is false, frivolous and not based on true facts. The opponents No.1 has denied all adverse allegations of deficiency of service and unfair trade practice made by the complainants. The opponent No.1 has also challenged the jurisdiction of forum to entertain the complaint and has submitted that, present subject matter of the complaint is in respect of dispute pertaining to the business of opponent No.1 and therefore in case of such dispute it must be referred to Deputy Registrar of Co-operative under the Maharashtra Co-operative Society Act. The opponent No.1 has also challenged the status of the complainants as a consumer and further stated that complaint is hit by section 24 (A) of Consumer Protection Act..

9) While admitting the status of the complainants as flat purchasers in the building of opponent No.1 and members of opponent No.1, the rest of the allegations in respect of deficiency of service and unfair trade practice have been denied by opponent No.1. According to opponent No.1 since the day one when complainants and their family members started staying in the building of opponent No.1 they have been harassing ill treating the office bearers of opponent No.1 and other flat holders and thereby they are committing breach of peace. According to opponent No.1 the complainants are addicted to litigations. They are very much fond of making false complaints against the office bearers and other flat purchasers to various authorities. Therefore number of complaints have been filed against the complainants. It is also contended by the opponents that complainant are in habit of violating rules and regulations other norms. They are also not following the directions issued by opponent No.1 or the decisions taken in AGM of Opponent No.1. According to opponent No.1 due the behavior of the complainants the entire society members have

totally disturbed. Due to the harassment on the part of complainants and its family members are facing problem daily.

10) The opponent No.1 categorically denies that the parking space was not allotted to the complainants deliberately in the year 2013-14. According to opponent No.1 the parking space is allotted to the members of the society as per their eligibility. In the year 2013-14 the complainants were found ineligible and therefore in view of guidelines of general body meeting dated 24/03/2013 the parking space is not allotted to the complainants. In the meeting dated 24/03/13 the behavior of the complainants towards society and other flat holders was taken into considerations and therefore parking place was not allotted to the complainants. The opponent No.1 also denies that, it is collusion with opponent no.2 and therefore conveyance is not obtained by opponent No.2. According to opponent No.1 it is taking steps for getting conveyance and they are in contract with opponent no.2 in this context.

11) The opponent No.1 categorically denies that water valve leading to the house of complainants has been deliberately shut down. According to opponent no.1 separate water valve to the individual flat is never provided to opponent No.1 and for three building one valve is provided. In this connection except the complainants none of the flat holders from three building have made any allegations as made by the complainants. Therefore the said allegations made by the complainants devoids any merit. Opponent No.1 further submits that entry to the terrace is restricted for security purpose and the excess on the terrace is allowed only with security person. While doing so there is no ill intention on the part of opponents. The other flat holders have no complaint for this rule.

12) While justifying the change of place of the garbage bins within the society premises the opponent No.1 submits that the garbage bins have been shifted in the society premises as per the decision taken in Special General Body Meeting dated 29/12/2013. The said decision has been unanimously accepted by other members. The opponent No.1 submits that the garbage bins are properly kept and covered with lead, by doing so the area which kept neat and clean. Except the complainants none of the flat holders has made any allegations or complaint for change of garbage bins. Therefore allegations leveled by the complainants about the garbage bins devoids any merit. On the contrary the complainants themselves have indulged in mischievous activities by throwing garbage in front of the building due to which nuisance, damage has been caused to opponent No.1. Beside that complainants and their family members are in habit of throwing water on the cars passing below the window of the complainants flat. The complainants are also deliberately parking their vehicle in front of entrance of C-Wing and spilling garbage. Due to which nuisance has been caused to other flat holders. In order to check these activities of the complainants the opponent had to pass a resolution in Special General Meeting imposing penalty of rs.500/- to the members indulging in and damaging and misusing the common property of the opponent No.1.

13) The opponent No.1 categorically denies the allegations of illegal and unauthorized construction by flat holder in their respective flats. On the contrary the complainants themselves have carried out alteration and addition without taking any permission from opponent No.1 and have violated the norms of BMC. Therefore according to opponent No.1 all allegations made by the complainants are false and baseless. Moreover, the complainants while making wild allegations of deficiency of service and unfair trade practice have not come before the forum with clean hands. Therefore opponent No.1 prays to reject the complaint.

14) On respective contentions of the parties following points arises for our considerations. Our findings are recorded against the same.

POINTS

1. Do the complainants prove that, the opponent no.1 to 4 have indulged in deficiency of service and unfair trade practice? **Partly proved.**
2. Whether complainants are entitled to get compensation? **Partly proved**
3. What order? **As per final order**

REASONS

Admitted Facts

15) Before going to evidence on record it will not be out of place to go through some of the facts which are undisputed.

16) It is not disputed position that the complainants are occupants of flat no. C-101 in the building of opponent No.1 and are the members of opponent No.1. It is not disputed position that, the complainants and opponent have filed series of complaints against each other to police and other authorities. The decisions taken by opponent No.1 in Special General Meeting of opponent No.1 are not denied by opponent No.1. It is not disputed position that opponent No. 2 to 4 not obtained the conveyance and occupation certificate of the building of opponent No1 till today.

17) In view of above admitted facts in order to prove deficiency of service and unfair trade practice on part of opponents the complainant has filed on record copy of agreement of sale in respect of her flat, her correspondence with the opponents, copies of complaints they have filed to the various authorities in respect of their grievances against the opponents., photographs to show the position of dust bins placed by the opponent. The learned counsel for the complainants has also orally argued the matter. As against this the opponent in support of its written statement has also relied on copies of complaint filed by the opponents against the complainants, copies of resolution passed by the opponent in its special general meeting and photographs to show the mischief on the part of the complainants. The learned counsel for the opponents too argued the matter at length.

18) We have gone through the respective submissions, documents filed on record. From the perusal of same it is seen that, the complainants want to establish deficiency of service and unfair trade practice mainly relying on the issue of non supply of parking place, removal garbage bins by the opponents under the flat of the complainants, non issue of occupation certificate by opponent No. 2 and silence on the part of opponent No.1 for compelling the opponent No.2 for occupation certificate as well as conveyance certificate lastly the attitude of the opponent its office bearers to harass the complainants. We will consider it one by one.

19) To justify the entitlement of the complainants for parking place the complainants have come with a case that, they are in possession of residential flat admeasuring 56.76 sq. meters. The opponent No.5 has sanctioned the building plan by taking into consideration the facility of car parking. Except the year 2013-2014 the opponent has provide car parking to the complainants but in the year 2013-14 the same was refused under the guise of resolution passed in special general meeting 07/04/2013 saying that, because of the outstanding dues of Rs.31,383/- the parking place is not allotted to the complainants. The complainants state that the refusal of parking on the ground of outstanding dues amounts to deficiency of service and they are not justifying in doing so. An attempt has been made by the complainants to show that, they are not in

arrears of maintenance charges whatever dues shown by the opponents are towards penalty which is illegal.

20)As against his the opponent No.1 has justified the refusal of parking to the complainants by relying on resolution dated 07/04/2013 passed in special general meeting of the opponent No.1 and it is argued that of notice issued to the complainants they are refused to pay outstanding dues of Rs.31,383/- It is submitted that, though opponent No.1 does not dispute the provisions of allotment of parking as incorporated in D.C. Rules since the complainants have refused to pay outstanding dues they were denied the parking.

21)Now, it is significant to note that D. C. Rules which speak about the allotment of car parking in proportion to the area of flat possessed by flat purchasers. The complainants were denied car parking on the ground of outstanding dues from them. It is true that complainants have refused to pay outstanding dues. However, Maharashtra Co-operative Society Act speaks about the provisions for recovery of such dues by Co-operative housing society by invoking the provisions of Section 101 of said Act. For the reason best known to the opponent No.1 the said remedy was not exhausted by opponent No.1. We are of the clear opinion that, the D. C. Rules do not allow the society to withhold the allotment of parking on the ground that, dues are pending against the flat purchasers. On the contrary the complainants are in possession of alt admeasuring 56.76 sq. meters which entitled them to get car parking. We are also of the opinion that the action initiated by the opponent No.1 to withhold the car parking of the complainant without invoking the provisions of Section 101 of Maharashtra Co-operative Society Act is pre mature much less deficiency of service on its part.

22)Now, coming to the issue regarding the shifting of garbage bins, the complainants seem to have made much more capital for shifting of garbage bins by opponent No.1. It is the specific contention of the complainants that initially the members of opponent No.1 were collecting the garbage outside the premises of opponent No.1. However, with intend to harass the complainants the garbage bins have been deliberately shifted near the flat of the complainants and those garbage bins have been kept under lock & key and collapsible gate is constructed near the garbage bins. It is also tried to bring on record by the complainants that due to the garbage bins and bad smell of the garbage complainants are facing harassment and their mental peace is disturb. of repeated correspondence with the opponent No.1 and of filing complaints to the various authorities the office bearers of opponent No.1 have not shifted the garbage bins.

23)The opponent No.1 by placing on record the photographs has directly blames the complainants and submitted that complainants are in habit of throwing the garbage at the entrance of the society and becoming the nuisance value to opponent No.1. To show that, the garbage has been thrown on the entrance of the society as well in the open place near the parking place of the society, the opponent No.1 has placed on record number of photographs. In one of the photographs brother of complainant Mr. T.J. George is shown carrying garbage bin. This definitely supports the contention of the opponent No.1. Moreover other photographs on record also show that garbage has been scattered here and there in the premises of opponent No.1. On this background if the office bearers of opponent No.1 by passing a resolution have decided to keep garbage bins under lock & key with the help of collapsible gate then by any stretch of imagination the action of opponent No.1 cannot be deprecated. Moreover, the learned counsel for opponent No.1 has submitted that on every day garbage bins are made empty and garbage is properly disposed off. It is also pertinent to note that, by putting the garbage bins under lock & key with the help of collapsible gate nobody would get opportunity to commit any mischief with those garbage bins so as to create nuisance

to the members of opponent No.1. Secondly, it is also pertinent to note that even though garbage bins have been kept near the flat of the complainants there are other flat holders also residing near the flat of the complainants however, none of them has come forward to make any complaint against opponent No.1 in respect of shifting garbage bins. If the correspondence on record filed by the complainants as well as complaint filed by her are perused then the only conclusion that can be drawn that, due to her personal grievances with office bearers of opponent No.1 the complainants want to settle their score by agitating the issue of garbage bins. We are of the opinion that the shifting of garbage bins and putting them in lock & key has been done with intent to safeguard the interest of the flat purchasers. Therefore we do not find any deficiency of service on the part of opponent No.1.

24)The complainants have also alleged deficiency of service against opponent No.1 & 2 to 4 by saying that no conveyance certificate and occupation certificate has been obtained though it is a mandatory requirement. Now, it is mandatory requirement for the developers to obtain O.C. before handing over the possession of flats. However, the society cannot be held responsible in case of conveyance certificate. It is a duty of developer/builder to execute the conveyance before 4 months from the registration of co-operative housing society. The opponents No.2 to 4 are definitely liable for the same. However, the complainants have also dragged opponent No.1 in said allegations alleging conspiracy of opponent No.1 with opponent No.2 to 4. In absence of any written and oral evidence said allegation of conspiracy between opponent No.1 and opponent No.2 to 4 cannot be accepted. In this case the complainant in individual capacity cannot ask conveyance and it is always to be granted in favour of co-operative housing society. Therefore we hold opponent No.2 to 4 for deficiency of service for not obtaining the O.C. only before handing over the possession of respective flat of the flat purchasers.

25)Now, coming to the allegation of complainants about closing of water connection to their premises, it appears to us that said allegations are also of any merit because for supplying water the water cock is provided not for any residential flat in isolation and the water cock is always provided for entire building. Therefore if there are more than two wings in the society then two water cocks are provided to separate wings for supply of water. Considering the attitude of the complainants we are of the opinion that complainants have raised this point only to make allegations against the office bearers of the society. In absence of any photographs of separate water cock provided to the flat of the complainants, the contention of the complainants cannot be accepted.

26)Lastly, complainants have made much more capital about the number of complaints filed by them against members of opponent no.1, against other flat purchasers to show that, these complaints show constant harassment to the complainants by the office bearers of opponent No.1. Now, opponent No.1 in its special general meeting has also discussed the adamant attitude of the complainants and opponent No.1 has also filed series of complaints against the complainants. The complainants have gone to such extent by making allegation of conspiracy between opponent No.1 & police. The complaint filed by the complainants against opponent No.1 and vice versa is a matter of record and it simply goes to show that complainants are not also peace loving persons and they are in habit of picking up quarrels frequently. It is also significant to note that, complainants are not obeying the directions passed in special general meeting and also challenging the appointment of office bearers. If really the complainants would have been really aggrieved by the appointment of office bearers then they ought to have to challenge the same before Registrar, Co-operative Housing Society under Maharashtra Co-operative Act. Without exhausting that remedy complainants are making hue and cry against the members of opponent No.1 which goes to show their quarrelsome attitude. Perusal of

record it is seen that opponent No.1 by passing a resolution impose fine to the flat holders who are keeping garbage in the corridor. The record shows that Rs.31/- is amount of penalty levied against the complaints. The complainants without challenging the same have tried to make the capital of it but flatly refused to pay the same. Therefore we are of the opinion that allegations leveled by the complaints about ill-treatment and harassment to them at the hands of office bearers of opponent No.1 any merit. Therefore from the above discussion we partly allow the complaint. However, while granting compensation to the complainants we restrict ourselves from granting any compensation because any amount of compensation to the complainants is unnecessary financial burden to opponent No.1 and its other members in which complainants themselves are included and therefore we do not award any compensation and pass following order.

ORDER

1. Complaint is partly allowed.
2. It is hereby declared that, opponent No.1 has indulged in deficiency of service by not awarding parking place to the complainants.
3. Opponent No.2 to 4 have also indulged in deficiency of service by not issuing occupation certificate to the complainants in respect of their flat.
4. Opponent no.1 is directed to issue parking place, and opponent No.2 to 4 are also directed to issue Occupation Certificate to the complainants, within 2 months from the receipt of copy of order.
5. Opponent No. 1 to 4 are jointly and severally directed to pay Rs.5,000/- towards cost of the complaint.
6. Opponent No.1 to 4 are directed to filed compliance / non-compliance affidavit on or before 25/09/2015.

**[HON'BLE MR. S S VYAVAHARE]
PRESIDENT**

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