

**BEFORE THE HON'BLE STATE CONSUMER DISPUTES REDRESSAL  
COMMISSION, MAHARASHTRA, MUMBAI**

**CONSUMER COMPLAINT NO.CC/07/177**

Jolly Apartment Co-op. Hsg. Society Ltd.,  
Plot No.76, TPS II, Saraswati Road,  
Santacruz West, Mumbai 400 054.

.....Complainant(s)

**Versus**

M/s.Saranga Estate Pvt.Ltd.,  
263, Swastik Sadan, 8<sup>th</sup> Road,  
Khar West, Mumbai 400 05.

.....Opponent(s)

**BEFORE:**

**Hon'ble Mr. P.B.Joshi, Presiding Judicial Member**  
**Hon'ble Dr. S.K. Kakade, Member**

For the Complainant: Adv.Uday Wavikar A/w.  
Adv.Supriya Patil

For the Opponent/s: None

**ORAL ORDER**

**Per Hon'ble Mr. P.B.Joshi, Presiding Judicial Member**

[1] Consumer complaint is filed by Jolly apartment co-operative Housing Society Ltd. against the builder contending about deficiency in service and claiming amounts on different counts and for Occupancy Certificate and Building Completion Certificate [hereinafter to be referred to as "OC and BCC"]. Complainant society is owner of the plot admeasuring 2854 sq.yards i.e. 2385.94 sq.mtrs situated at plot no.76, TPS II Saraswati Road, Santacruz West, Mumbai 400 054 together with ground and three storied building of 4 Wings being A, B, C and D. The A Wing is having 6 shops and 6 flats, B Wing is having 8 flats, C Wing is having 9 flats and D wing is having 8 flats and as such the society in its four wings is having 31 flats, 6 shops and 2 enclosed garages. There are 37 members of the society. Construction of the building was done in the

year 1969 and hence there was necessity to repair and renovate the building. The opponent offered for the development work i.e. construction of 4 additional floors above existing structure and those rights were given to the opponent by the complainant society and in view of that, the opponent has agreed to renovate the old building by doing the work agreed between the parties. The work was to be completed within a particular period and in case of delay, it was agreed that opponent will pay monthly compensation of Rs.50,000/-. It was contended that the opponent has not constructed the building with occupancy certificate and completion certificate within agreed period. It was also contended that the agreed work for renovation of the old building was also not done by the opponent and hence the society has filed consumer complaint with prayer that opponent be directed to pay sum of Rs.35,18,970/- being the amount of expenditure for the work to be done for renovation of the old building. Alternatively, it was also prayed that opponent be directed to remove construction defects within a period of two months. The complainant prayed that the opponent be directed to furnish to the complainant occupancy certificate and completion certificate. The complainant also prayed that opponent be directed to pay the complainant proportionate share of maintenance charges collected from new flat purchasers amounting to Rs.3,000/- per month from 01/04/2005. The complainant also prayed that the opponent be directed to pay liquidated damages to the complainant as per development agreement calculated at the rate of Rs.50,000/- per month from April 2003 till October 2007 amounting to Rs.27,50,000/- and further sum at the rate of Rs.50,000/- per month till OC and BCC are furnished and other terms of the Development Agreement are complied with. The complainant also prayed for a sum of Rs.1 lac being compensation for mental agony and stress, harassment, hardship and losses suffered by the complainant. Complainant prayed for a sum of Rs.35,000/- towards legal and incidental expenses.

[2] The opponent resisted the complaint by filing written version on record at page from 147 to 165. The opponent has not disputed about the

development agreement with the complainant. However, it is contended that there is no deficiency in service on the part of the opponent. It was contended that this is a second consumer complaint as first complaint was filed and withdrawn by the complainant and hence second consumer complaint is not maintainable. It was also contended that members of the complainant society have filed individual complaints. Consumer complaint is time-barred. It was contended that complainant society is not consumer as no consideration was paid by the complainant to the opponent. It was contended that OC is obtained.

[4] Considering submission of both the advocates, considering rival contentions and record and scope of the complaint, following points arise for our determination and our findings thereon are noted as against them for the reasons herein below :-

Sr.No.	Points	Finding
1.	Whether the present consumer complaint is tenable?	Yes
2.	Whether the consumer complaint is barred by limitation?	No
3.	Whether the complainant is consumer?	Yes
4.	Whether there is deficiency in service on the part of the opponent?	Yes
5.	Whether complainant is entitled for Rs.35,18,970/- on account of expenditure to be incurred for work of renovation of old building?	Yes
6.	Whether the complainant is entitled for Occupancy Certificate and Building Completion Certificate?	Yes
7.	Whether complainant is entitled for direction to the opponent to share of maintenance charges collected from new flat purchasers amounting to Rs.3,000/- per month from 01/04/2005?	No
8.	Whether the complainant is entitled for Rs.27,50,000/- as liquidated damages at the rate of Rs.50,000/- per month from April 2003 till October 2007 and further sum at the rate of Rs.50,000/- per	Yes

	month till OC and BCC are furnished?	
9.	Whether the complainants are entitled for Rs.1,00,000/- as compensation on account of mental agony and stress, harassment, hardship and loss suffered by the complainant?	Yes
10.	What order?	As per final order.

**-: REASONS :-**

**POINT NO.I :- [TENABILITY]**

[5] It was contended that earlier this complainant has filed one consumer complaint against this opponent on the same cause of action. That was withdrawn and hence this consumer complaint is not tenable. The learned advocate for the complainant has submitted that earlier complaint was withdrawn with permission of the Commission and that order is at page 144. We have gone through the copy of the said order passed by this Commission whereby the complainant was allowed to withdraw the said consumer complaint with liberty to file a fresh and hence we find that there is no substance in the contention of the opponent that this consumer complaint is not tenable as previous consumer complaint was withdrawn.

[6] It is also contended that the members of the complainant society have filed different complaints against this opponent and hence this complaint is not tenable. Learned advocate for the complainant has admitted that the members of the society have filed different complaints against this opponent. However, it was contended that those consumer complaints are in respect of their individual rights as per separate agreement with them. It was contended that present complaint is in respect of the rights of the society. This consumer complaint has no concern for individual rights of the members for which they have filed separate complaints. In view of the said submission and in view of prayer made in this complaint, it is very clear that this consumer complaint has no concern with the individual right of the members of the society. Hence, only because the members of this complainant society have filed consumer complaints against this opponent, it cannot be said that this

consumer complaint is not tenable. As discussed above, it is clear that those consumer complaints are filed by the members for their individual rights in view of the separate agreements entered with them. Thus, it is very clear that the present consumer complaint is tenable. Hence, we answer the Point No.I in affirmative.

**POINT NO.II :- [LIMITATION]**

[7] The opponent has raised plea that the complaint is time barred. It is clear that agreement was entered into between the complainant and opponent on 04/06/2001 and the consumer complaint is filed in the year 2007. Learned advocate for the complainant has submitted that the cause of action arose when the opponent has not complied with obligations as per agreement executed between the parties. As per the said agreement, the opponent was under obligation to do so many things mentioned in the agreement. Said Development Agreement is at page no.33 to 77. As per the agreement, the construction was to be completed within a particular period, but that was not done by the opponent. OC and BCC were to be obtained by the opponent, were not obtained and opponent was under obligation to pay Rs.50,000/- per month if work is not completed within stipulated period. In view of these agreed terms and in view of reliefs sought we find that there is continuous cause of action. Hence the complaint is not time barred. Thus, consumer complaint is well within limitation. Hence, we answer Point No.II accordingly.

**POINT NO.III :- [CONSUMER]**

[8] The opponent has contended that the complainant is not a consumer as there is no consideration paid by the complainant society to the opponent. We find that the said contention of the opponent is baseless for the simple reason that the opponents have acquired right of construction of upper four floors above the old structure owned by the complainant society. Those rights were given to the opponent and against those rights the opponent has undertaken to construct the upper four floors and renovate the old building. So, giving of those rights is itself a consideration for the services availed by the complainant of the opponent. Thus, it is very clear that the complainant is a consumer of the opponent

as contemplated under the provisions of the Consumer Protection Act, 1986. Hence, we answer Point No.III in affirmative.

**POINT NO.V :- [DEFICIENCY IN SERVICE]**

[9] It is a matter of record that opponent has not obtained OC and BCC. No doubt, in written version, opponent has mentioned that the opponent has obtained OC. However, that was not filed on record. Not only that but in para 23 of the written version, it is mentioned that the complainant is free to collect copy of OC from the office of the opponent. In the next sentence itself, it is mentioned that BCC is yet to be issued by the BMC and same will be furnished to the complainant as and when the same is made available to the opponent. Thus, it is clear that no OC or BCC is issued by the concerned authority and obtained by the opponent. Otherwise, the opponent would have filed those documents on record. In absence of those documents on record, it is very clear that the opponent has not obtained OC and BCC. Thus, it is very clear the there is deficiency in service on the part of the opponent. Hence, we answer Point No.IV in affirmative.

**POINT NO.V :- [ENTITLEMENT FOR EXPENDITURE]**

[10] The complainant has contended that the opponent has not done work of renovation of the old building as agreed between the parties. We have already referred above that agreement executed between the complainant and the opponent is at page no.33 to 77. The complainant has contended what work was not done by the opponent and to support that the complainant has filed report of Architect, Mr.Shrikant Hadke which is at page no.92 to 119. Report has given in tabular form mentioning work agreed to be done as mentioned in which clause of the agreement and present situation showing what work was not done and defective work was done by the opponent. It was contended that by the opponent that the said architect is not a panel architect and hence his report cannot be considered. The said contention cannot be accepted for the simple reason that it is not necessary that only panel architect should give report. Any competent person can give report who is expert in that field. It is mentioned in the report itself that Mr.Shrikant Hadke is

proprietor of "Shrikant Hadke Architect and Interior Consultant". It is material to note that to counter this report of architect, Mr.Hadke, opponent has not filed any counter report of any other architect. It is further material to note that though the opponent has disputed about the contention of the said report and about the work which is unfinished or which is not done, said contention of the opponent cannot be considered as the written version filed by the opponent does not bear signature of the opponent. In absence of signature of the opponent that document though styled as written version of the opponent cannot be considered as written version in the eye of the law and thus, we find the contention of the complainant in the consumer complaint remained unchallenged. Considering this aspect of the matter, considering the contention of the complainant that the opponent has not done work of renovation of the old building as agreed between the parties and supported by the report of Mr.Hadke and in absence of any counter document, we have to accept the said report of architect, Mr.Hadke. The said architect has given details of the work which was not done or defective work or incomplete work and also given the details of the estimate of remaining work and amount required for completing the unfinished work or defective work and that estimate is amounting to Rs.35,18,970/-. In absence of any counter to said amount, we have to accept said contention of the complainant. Hence, it is clear that opponent has not done work as agreed between the parties and that is clear-cut deficiency on the part of the opponent. Non-completion of the work within the stipulated period is also deficiency in service. In view of the report of architect, Mr.Hadke, the complainant is entitled for Rs.35,18,970/-. Hence, we answer Point No.V accordingly.

**POINT NO.VI :- [OC & BCC]**

[11] It is statutory duty of the opponent to obtain OC and BCC. The complainant has specifically mentioned in the consumer complaint that the opponent has not obtained OC and BCC. We have already discussed above that opponent has mentioned in written version that the opponent has obtained those certificates. However, those are not filed on record. We have also referred contention of the opponent in written version that the OC and BCC are yet to be issued by the Corporation and also

mentioned above that the said written version of the opponent is not written version in the eye of the law as that is not signed by the opponent and hence it is very clear that the opponent has not obtained OC and BCC and hence the complainant society is entitled for the direction to opponent to obtain OC and BCC and hand over it to the complainant society. Hence, we answer Point No.VI accordingly.

**POINT NO.VII :- [MAINTENANCE CHARGES]**

[12] Complainant society has claimed that the opponent be directed to pay the complainant proportionate share of maintenance charges collected from new flat purchasers amounting to Rs.3,000/- per month from 01/04/2005. However, there is absolutely no evidence to that effect on record and in absence of any evidence, the said contention of the complainant cannot be accepted. Hence, we answer Point No.VII in negative.

**POINT NO.VIII :- [LIQUIDATED DAMAGES]**

[13] Complainant has claimed Rs.27,50,000/- on account of liquidated damages of Rs.50,000/- per month from April 2003 till October 2007 and further damages at the same rate till the OC and BCC are furnished. The learned advocate for the complainant has submitted that the work was to be completed within 30 months. The construction was to be commenced within 6 months and to be completed within 18 months. The agreement was executed on 04/06/2001. It is the matter of record that even till today, no OC and BCC is obtained by the opponent. Renovation work of the old building is also not complete as discussed above. As per the agreement, if the work is not completed within stipulated period, then the opponent has agreed to pay Rs.50,000/- per month to the complainant till completion of the work. The learned advocate for the complainant submitted that in view of said term in the agreement, the complainant is claiming said liquidated damages at the rate of Rs.50,000/- per month from April 2003 as the work was not done within 30 months from the date of agreement. The complainant is also entitled for the said liquidated damages at the rate of Rs.50,000/- for further period till OC and BCC is obtained. As far as other works is concerned, we have already passed



order of giving amount by the opponent to the complainant. Hence, the complainant is entitled to received amount of Rs.50,000/- per month till OC and BCC are obtained by the opponent. Hence, we answer Point no.VIII accordingly.

**POINT NO.IX :- [COMPENSATION]**

[14] The complainant society has claimed compensation of Rs.1 lac towards mental agony and stress, harassment, hardships suffered by the complainant. The agreement was executed between the complainant and the opponent in the year 2001 and the work was to be completed by the opponent within 30 months. However, that was not done by the opponent and the complainant was compelled to knock the doors of the Commission and consumer complaint was filed in the year 2007 and hence members of the complainant society must have suffered hardship and they have suffered harassment and hence they are entitled for the compensation on that count. The complainant has claimed compensation of Rs.1 lac on that count and the complainant is entitled for said amount. We, therefore, answer Point No.IX accordingly.

**POINT NO.X :- [WHAT ORDER]**

[15] In view of the Point- I to IX, consumer complaint deserves to be partly allowed. Hence, we proceed to pass the following order.

**ORDER**

- (1) Consumer complaint is hereby partly allowed with costs of Rs.25,000/-[Rs.Twenty Five Thousand only] to be paid by opponent to the complainant society.
- (2) The opponent is directed to pay an amount of Rs.35,18,970/- [Rs.Thirty Five Lacs Eighteen Thousand Nine Hundred Seventy only] to the complainant on account of non-compliance of renovation work by the opponent.
- (3) The opponent is directed to obtain OC and BCC and hand over to the complainant.
- (4) The opponent is directed to pay Rs.27,50,000/- on account of liquidated damages @ Rs.50,000/- per month from April 2003

to October 2007 and further liquidated damages at the same rate of Rs.50,000/- per month till OC and BCC are obtained.

- (5) The opponent is directed to pay compensation of Rs.1 lac [Rs.One lac only] to the complainant on account of harassment suffered by the members of the complainant society.
- (6) The amounts should be paid by the opponent to the complainant within two months, otherwise the amounts will carry interest @9% p.a. from the date of this order.
- (7) Copies of this order be furnished to the parties forthwith.

**Dictated and Pronounced in the  
Open court on 6<sup>th</sup> November, 2019.**

**[ P.B.Joshi]  
PRESIDING JUDICIAL MEMBER**

**[Dr.S.K.Kakade]  
MEMEBR**