

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
MAHARASHTRA, MUMBAI**

Complaint Case No. CC/11/78

Jyoti Avenue Co-operative Housing Society,
Having its office at: Plot No.291,
Shere-Punjab Society,
Mahakali, Andheri (E),
Mumbai 400 093.

.....Complainant(s)

Versus

1. M/s.Jyoti Developers and Builders,
A partnership firm, having its office at:
102, Jyoti Dwelling Dr.Charat Singh Colony,
New Link Road, Andheri (East),
Mumbai 400 093,
Through its partner,
Atul Sachdev,
R/at: 170, Shere-E-Punjab Colony,
Mahakali, Andheri (East),
Mumbai 400 093.

2. Atul Sachdev,
R/at: 170, Shere-E-Punjab Colony,
Mahakali, andheri (E),
Mumbai 400 093.

3. Vikas Sachdev,
R/at: 170, Shere-E-Punjab Colony,
Mahakali, andheri (E),
Mumbai 400 093.

4. Sachdeva Housing Pvt. Ltd.,
Having office at:
102, Jyoti Dwelling Dr.Charat Singh Colony,
New Link Road, Andheri (East),
Mumbai 400 093.
Through its Director,
Rakesh Sachdev,
R/at: 170, Shere-E-Punjab Colony,
Mahakali, andheri (E),
Mumbai 400 093.

.....Opponent(s)

5. Rakesh Sachdev,
R/at: 170, Shere-E-Punjab Colony,
Mahakali, andheri (E),
Mumbai 400 093.

6. Harishchandra Construction Pvt. Ltd.,
Having office at:
102, Jyoti Dwelling Dr.Charat Singh Colony,
New Link Road, Andheri (East),
Mumbai 400 093.

Through its Director,
Atul Sachdev,
R/at: 170, Shere-E-Punjab Colony,
Mahakali, andheri (E),
Mumbai 400 093.

7. Shere-E-Punjab Society Ltd.,
Having its office at: Mahakali,
Near Gurudvara, Andheri (E),
Mumbai 400 093.

BEFORE:

**P.B. Joshi, Presiding Judicial Member
Dr.S.K. Kakade, Member**

**For the
Complainant(s): Advocate Mr.Uday Wavikar.**

**For the
Opponent(s): Advocate Mr.Anand Patwardhan for opponent
nos.2, 3 and 5.**

Advocate Mr.Digambar Thakare for opponent no.7.

ORAL ORDER

Per Hon'ble Mr.P.B. Joshi – Presiding Judicial Member:

- (1) Complainant is a society of the flat purchasers constructed on C.T.S. No.368, Plot No.291, Shere-Punjab Society, Mahakali, Andheri (E), Mumbai 400 093. The members society before forming society have entered into agreement with opponent nos.1, 2, 3, 4 and 5 and

also with opponent no.6 by different flat purchasers. The opponent no.7 is a parent Co-operative Housing Society. First agreement for booking of the flat was in the year 1992 and thereafter from time to time different agreements were executed in favour of different purchasers. Entire consideration was paid by the purchasers from time to time. However, the society was not formed by the opponents and hence, the purchasers themselves have formed the society. The opponents have not obtained occupancy certificate and building completion certificate. The opponents have not executed conveyance in favour of the society. The opponents have not paid the outgoings on account of property taxes and water charges and hence, consumer complaint has been filed with the prayer that the opponent nos.1 to 6 be directed to execute the conveyance in favour of the complainant society, to transfer right, title and interest along with structure standing thereon in respect of the property situated on C.T.S. No.368, Plot No.291, Shere-Punjab Society, Mahakali, Andheri (E), Mumbai 400 093 admeasuring 1242 sq. meters. Complainant has also prayed that opponent no.7 be directed to transfer the share certificates in favour of the complainant and direct the opponent nos.1 to co-operate for the same. The complainant has also prayed that the opposite parties be directed to handover occupancy certificate, building completion certificates and other original documents lying with the opponents. Complainant also prayed that opponents be directed to reimburse Rs.70,000/- being the expenses incurred for getting permanent municipal drinking water connection along with interest @21% per annum from the date of payment i.e. from December, 1998 till realization. Complainant also prayed that opponent nos.1 to 6 jointly and severally be directed to reimburse Rs.50,03,967/- in respect of the property tax and Rs.6,56,805/- for water charges. Complainant also

- prayed that opponents to reimburse Rs.1,15,522/- being the amount taken by opponent nos.1 to 6 for formation of society along with interest @21% per annum from the date of payment till realization. Complainant prayed that opponents be directed to pay Rs.5,00,000/- towards compensation for inconvenience, harassment and mental agony suffered by the complainant society.
- (2) Opponent nos.2, 3 and 5 have filed their written version and resisted the complaint. It was contended that opponent nos.1, 4 and 6 are not in existence as they are already dissolved. It is not disputed that opponent nos.2 and 3 were partners of opponent no.1 and opponent no.5 was the director of opponent no.4 and opponent no.2 was also director of opponent no.6. The opponents have not disputed about the execution of agreements with the different flat purchasers, payment of consideration, however, contended that this Commission has no pecuniary jurisdiction to entertain the complaint. It was contended that the complaint is time barred. There is no deficiency in service on the part of the opponents. The opponents are not liable to pay any amount as claimed by the complainant and hence, it was also contended that complainant is not entitled for conveyance as claimed and hence, prayed for dismissal of the complaint.
- (3) Opponent no.7 filed written version and contended that opponent no.7 is ready to give share certificate to the complainant and ready to execute the conveyance subject to clearance of dues. It was contended that opponent no.1 should comply for that and give all the necessary things. It was contended that opponent no.1 is member of opponent no.7.
- (4) Considering the submissions made before us, considering the record and keeping in view the scope of the complaint, following points

arise for our determination and our findings thereon are noted for the reasons as below:-

<u>Sr. No.</u>	<u>Points</u>	<u>Finding</u>
(i)	Whether this Commission has pecuniary jurisdiction to entertain the complaint?	Yes.
(ii)	Whether there is deficiency in service on the part of the opponents?	Yes.
(iii)	Whether the complaint is barred by limitation?	No.
(iv)	Whether the complainant is entitled for the amounts claimed?	Yes. As per order
(v)	Whether the complainant is entitled for amount of Rs.5,00,000/- on account of compensation for the inconvenience, harassment and mental agony suffered by the members of the complainant society?	Yes. As per order.
(vi)	Whether the complainant is entitled for direction to opponents to obtain occupancy certificate, completion certificate and other documents?	Yes.
(vii)	Whether complainant is entitled for conveyance?	Yes.
(v)	What order?	As per final order.

REASONS:

Point no.(i) Pecuniary Jurisdiction:

- (5) Advocate for the opponents has submitted that this Commission has no pecuniary jurisdiction to entertain the complaint as amount

claimed by the complainant is more than Rs.1 crore. Advocate for the opponents has given statement showing how the opponents have arrived at the amount of Rs.2,40,44,676.60 as valuation of the complaint. After perusing the said documents, we find that out of Rs.2,40,44,676.60 amount of interest shown in the said document is Rs.1,75,98,382.60. It is because of this amount only total comes to Rs.2,40,44,676.60. If this amount is not considered then valuation is within pecuniary jurisdiction of this Commission. Said interest is calculated @21% per annum from 8th October, 1998 till date of filing of the complaint i.e. 17/02/2011. The question remains, whether that amount can be considered? There cannot be any dispute that if the interest is claimed prior to filing of the complaint then it should be calculated till filing of the complaint and that should be considered for deciding the pecuniary jurisdiction of this Commission. So, it is necessary to consider the prayers made in the complaint. Prayer as far as pecuniary claims are concerned prayer (e) is about claiming Rs.70,000/- for the expenses incurred for getting permanent Municipal drinking water connection along with interest @21% from December, 1998 till realisation. In the calculations submitted by advocate for the opponents interest on the said amount is shown of Rs.1,91,100/-. Prayer clause (f) is also about the monetary claim where the complainant claimed that opponents be jointly and severally directed to reimburse the amount of Rs.50,03,967/- in respect of property tax and Rs.6,56,805/- towards water charges. However, in that prayer clause interest is not claimed on the said amounts. No doubt, in statement of claim it is mentioned that Rs.50,03,967/- as property tax along with interest @21% per annum from the date of payment calculated upto March, 2010. However, the calculation of the interest is not given in the statement of claim and the prayer of the interest on the said amount

is not mentioned in the prayer clause. So, only because in statement of claim it is mentioned 'along with interest' from the date of payment that cannot be considered. The reason is very simple that the statement of claim should be according to prayer clause only and hence, statement of claim is only for the purpose of valuation on the basis of the prayer made in the complaint. So, when the prayer of interest on Rs.50,03,967/- is not made in the prayer clause, there is no question of calculating interest on that amount and consider it for the valuation the complaint. So without that interest the valuation of claim is Rs.64,46,294/-, that is mentioned in the statement of claim filed along with the complaint and that is also mentioned in the document filed by Advocate of opponent. The only addition made in this calculation is interest, which is Rs.1,75,00,000/- and odd amount and it is because of that the said figure of Rs.2,40,44,676.60 has come and it was contended that this Commission has no pecuniary jurisdiction to prosecute the complaint. However, in view of above discussion it is very clear that in prayer clause complainant has not claimed interest on the said amounts, i.e. on Rs.50,03,967/- and Rs.6,56,805/-. Thus, it is very clear that the complaint filed by the complainant is correctly valued only for Rs.64,46,294/-. Hence, this Commission has pecuniary jurisdiction to entertain the complaint and hence, we answer point no.(i) in affirmative.

Point no.(ii) Deficiency:

- (6) It is the contention of complainant that opponents have not obtained occupancy certificate, building completion certificate and have not formed the society. They have also not executed the conveyance and that is admitted position. So, there is clear-cut deficiency in service in not complying those statutory obligations. Hence, we answer point no.(ii) in affirmative.

Point nos.(iii) Barred by limitation and (iv) Entitlement of amount claimed:

- (7) Complainant claimed that amount of Rs.50,03,967/- was paid by the complainant for property tax and amount of Rs.6,56,805/- was paid for water charges which opponents were under obligation to pay. It was submitted that complainant was compelled to pay said amount to avoid auction of the property and disconnection of the water supply. The complainant has filed the documents about payment of the said amount. The documents are at page nos.288 to 293. These documents are the extract of the accounts maintained by society for payment of property tax and water charges from time to time and the total is shown on page 293 as Rs.50,03,967/- on account of municipal taxes and Rs.6,56,805/- as water charges. It was submitted that the payment was made by cheques and cheque numbers are also mentioned on those documents. It was contended that it is the duty of the opponents to pay all these charges till the conveyance is executed or at least obtaining of occupancy certificate. The advocate for complainant has drawn our attention to Section 6 of Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as 'MOFA' for the sake of brevity) and contended that as per the said provision it is the liability of the opponents to pay all these charges and taxes. The Ld.Advocate for the opponents has contended that the liability of opponents is there when the opponents are in possession. It was contended that the possession is already handed over to the flat purchasers and hence, opponents are not liable to pay any amount as claimed by the complainant. So, it is necessary to go through Section 6 of MOFA, which reads as under:

SECTION 06: RESPONSIBILITY FOR PAYMENT OF OUTGOING TILL PROPERTY IS TRANSFERRED:

A promoter shall, while he is in possession and where he collects from persons who have taken over flats or are to take over flats sums for the payment of outgoings even thereafter, pay all outgoings (including ground rent, municipal or other local taxes, on income taxes, water charges, electricity charges, revenue assessment, interest on any mortgage other encumbrances, if any), until he transfers property to the persons taking over the flats, or to the organisation of any such persons, where any promoter fails to pay all or any of the outgoings collected by him from the persons who have taken over flats or are to take over flats, before transferring the property to the persons taking over the flats or to the organisation of any such persons, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges (if any) to the authority or person to whom they are payable and to be responsible for any legal proceedings which may be taken therefor by such authority or persons.

- (8) The Advocate for the opponents has given stress on the words “*while he is in possession and where he collects from persons who have taken over flats*”. It was submitted that, here in the present case the opponents have not collected any amount from the complainant except for formation of society and possession is already given to the members of complainant society and hence, the opponents are not liable to pay any outgoings as per Section-6 of MOFA. It is not disputed that the members of the opponents are in possession of the flats. However, it was contended that it was not a

legal possession and hence, flat purchasers cannot be considered as in possession in the eyes of law and for the purpose of Section 6 of MOFA. As per section 3(2)(i) of MOFA promoter shall not allow person to enter into possession until a completion certificate is duly given by the local authority. Herein the present case it is admitted position that no completion certificate and occupancy certificate are issued by the concerned authority. So, without obtaining such completion certificate and occupancy certificate, no possession can be given and law mandates that the promoter shall not allow any person to enter into possession until the completion certificate is obtained. No doubt, it is also mentioned in the said provision that no person shall take possession of the flat until such completion certificate has been duly given by the local authority. So, it is also necessary for the flat purchasers not to take possession or not to enter into flat unless occupancy certificate is obtained. However, it is material to note that Section 3 of MOFA is about general liability of the promoter. So, it is the liability of the promoter that he shall not allow any person to enter into any possession until he obtains occupancy certificate and building completion certificate. It is statutory duty of the promoter to obtain occupancy certificate and building completion certificate and then only he should allow anybody to enter the flat.

- (9) It was submitted that possession of the flats was given to the purchasers for furnishing i.e. fit-out possession. However, there is no such concept in the law and hence, the said contention cannot be accepted.
- (10) It was contended that the flat purchasers have done some illegal construction in the flats or outside the flats and it is because of that the Corporation is not giving occupancy certificate and completion

certificate. So, it is because of the flat purchasers the opponents are not getting occupancy certificate and building completion certificate. We find that, in most of the cases it is the defence of the promoter that the flat purchasers have taken the possession for furnishing or fit-out possession and continued in possession and have done some alteration which is not allowed and hence, Corporation is not giving occupancy certificate and building completion certificate. However, the promoter cannot take such defence for the simple reason that the law mandates that, he should not handover possession to the flat purchasers unless he obtains building completion certificate. It is the duty of the promoter to complete the construction in all respects, to obtain building completion certificate and then only handover possession to the flat purchasers. Therefore, if any alteration or addition is done by the flat purchasers, in that case the flat purchasers would be responsible. Here in the present case when the promoter is allowing somebody to enter the flat without obtaining completion certificate and now saying that purchasers have done some modification which is not in the plan and hence, promoter cannot get the completion certificate and occupancy certificate as the Corporation is not giving because of the illegal or unauthorised act of the flat purchasers, cannot be accepted. So, it is very clear that the contention of the opponents that as the member of the complainant society are in possession and opponents are not in possession and hence, Section-6 of MOFA is not applicable cannot be accepted. No doubt, in Section-6 of MOFA it is also mentioned that '*where he collects from persons who have taken over flats*'. It means the promoter can collect the amount for payment of outgoings from the persons who have taken over the possession of the flat after obtaining occupancy certificate and building completion certificate. If after obtaining occupancy certificate and building completion

certificate the possession is given then it is the liability of the occupier to pay necessary charges and the promoter can collect those charges for paying to the Corporation till the conveyance is executed and after execution of conveyance no question of collecting any amount by the promoter from the purchasers. So for this period after obtaining occupancy certificate and before execution of conveyance the promoter can collect money from the occupier for payment to the concerned authority. Here, we have already mentioned that the opponents have not collected any money for payment of charges. However as legal possession is not given, occupancy certificate and building certificate are not obtained it is the liability of the promoter i.e. opponent nos.1 to 6 to pay all outgoing. We have already referred above and discussed about the claim of Rs.50,03,967/- on account of property tax and Rs.6,56,805/- on account of water charges which were paid by the flat purchasers the members of the society and it is liability of the opponent nos.1 to 6 to pay the said amount to the complainant.

- (11) The advocate for the opponents has argued that those amounts i.e. taxes since 1992-93 and hence, those are time barred as not claimed within two years. It is admitted fact that complaint is filed in the year 2011. We again go to the provisions of Section-6 of MOFA and as per said Provision it is the liability of the promoter to pay all outgoing till conveyance is executed. It means that the promoter shall continue to be liable even after the transfer of the property to pay such outgoing. It means even if the conveyance is executed and if any arrears are there to be paid on account of outgoing it is for the promoter to pay those outgoing even after the execution of the conveyance. It means law mandates that the promoter shall pay that amount and he is continued to be liable to pay that amount. It

- means it is a continuous cause of action as it is a statutory obligation of the promoter and hence, it cannot be said that amount claimed is barred by limitation.
- (12) Complainant claimed the amount of Rs.1,15,522/- collected by the opponents from the flat purchasers for formation of the society. However, the opponents have not formed the society and the flat purchasers themselves have formed the society and it is not disputed by the opponents. Thus, it is very obvious that the opponents should return the said amount as that was collected for formation of society and that was not formed by the opponents, but, it was formed by the flat purchasers. That is also statutory duty on the part of the promoter to form the society and hence, if the amount is collected for formation of society and it is not formed then it is statutory duty to return that amount. Hence, complainant is entitled for that amount also.
- (13) The complainant claimed Rs.70,000/- paid for getting permanent water connection. However, advocate for the complainant has submitted that complainant is not pressing the said amount as complainant is not having any documentary evidence to that effect and hence, complainant is not entitled to get amount of Rs.70,000/- on account of water connection charges and interest thereon.
- (14) In view of above discussion the complainant is entitled for amount of Rs.50,03,967/- on account of property tax, amount of Rs.6,56,805/- on account of water charges and amount of Rs.1,15,522/- collected for formation of society. Hence, we answer this point accordingly.

Point No.(v) Compensation for inconvenience, harassment and mental agony:

- (15) Complainant claimed Rs.5,00,000/- on account of mental agony suffered by the members of the society. The advocate for the opponents has submitted that the complainant is a society and there is no question of any mental agony to the complainant. However, it is material to note that the members of the society have suffered mental agony as the first booking was in the year 1992 and till today they could not get occupancy certificate, building completion certificate and conveyance and they were required to knock the door of this Commission for getting relief. Hence, complainant society's members must have suffered mental agony. There are 22 members in the society and they are claiming Rs.5,00,000/- on account of mental agony. Considering the members of the society we find it proper to grant the said amount as claimed. Hence, we answer point no.(v) accordingly.

Point No.(vi) occupancy certificate and building completion certificate:

- (16) The complainants claimed that opponents be directed to obtain occupancy certificate and building completion certificate as that is statutory duty of the opponents/promoter. We have already discussed above the defence taken by the opponents that the purchasers have done some illegal act in the flats or outside the flats and that is why the Corporation is not giving occupancy certificate and building completion certificate. We have already discussed above that it was necessary for the opponents to construct the building in all respects, obtain occupancy certificate and building completion certificate and then only handover the possession of the flats and for which also law mandates. So flouting the law the

possession is given then he has to face the consequences and hence, it is the duty of the opponents to obtain occupancy certificate, building completion certificate and other necessary documents and handover to the complainant. Hence, we answer point no.(vi) accordingly.

Point no.(vii) Execution of conveyance:

- (17) It was contended by advocate for the complainant society that opponent no.1 is a partnership firm who has entered into an agreement with flat purchasers. It was contended that opponent no.1, opponent no.4 and opponent no.6 have jointly decided to construct the building for the purchasers. Advocate for the complainant has drawn our attention to page 74, 75 and 76. It is the part of the agreement and that document shows that what part of construction is to be done by opponent no.1, what part is to be done by opponent no.4 and what part is to be done by opponent tno.6. So, they are promoters. It was contended by the advocate for opponents that opponent no.1 was partnership firm. It was already dissolved. However it is not disputed that opponent nos.2 and 3 were the partners of the said firm. So, it is very clear that though the partnership firm is dissolved the liability is continued with the partners or it is for them to show that who has taken liability of the partnership firm. There is no documentary evidence to show that somebody has taken the liability of the said partnership firm and in absence of the same those partners i.e. opponent nos.2 and 3 who were the partners of opponent no.1 are under obligation to comply all necessary things which were to be done by opponent no.1 as partnership firm.

- (18) Opponent nos.4 and 6 were the private limited companies. It was submitted that those are already wound up. However, it is not disputed that opponent no.5 was the Director of opponent nos.4 and opponent no.2 was director of Opponent no.6. So even if the Company is wound up the Director has liability to comply the liability unless otherwise shown. Here nothing is shown who has to comply the liability of the company and hence, opponent nos.4 and 5 are liable for that. It is necessary to consider Section 11 of MOFA which reads as:

SECTION 11: PROMOTER TO CONVEY TITLE, ETC. AND EXECUTE DOCUMENTS, ACCORDING TO AGREEMENT:

“ A promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid or to an association of flat takers or apartment owners, his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement”.

- (19) It was submitted that opponent nos.1, 4 and 6 were the members of original society – opponent no.7 and that is not disputed. Thus, it is for the opponent nos.1 to 6 to take all necessary steps for execution of the conveyance in favour of the complainant society. It is also necessary for them to take all necessary steps for getting the share certificate by the complainant from opponent no.7. Opponent no.7 is ready to issue share certificate and even execute conveyance provided opponent no.1 should do the necessary things for that. So, it is the liability of opponent nos.1 to 6 to do all necessary things which are necessary for getting share certificate by the complainant society and for getting conveyance by complainant society. Hence, we answer point no.(vii) accordingly.

- (20) In view of answer to point nos.(i) to (vi) the consumer complaint deserves to be partly allowed and hence, we pass the following order:

ORDER

- (i) Consumer complaint is partly allowed with costs quantified at Rs.25,000/- (Rupees Twenty Five Thousand only) to be paid by the opponent nos.1 to 6 jointly and severally to the complainant.
- (ii) Opponent nos.1 to 6 are jointly and severally directed to pay to the complainant Rs.57,76,024/- (Rupees Fifty Seven Lacs Seventy Six Thousand Twenty Four only) (i.e. Rs.50,03,967/- on account of property tax, Rs.6,56,805/- on account of water charges and Rs.1,15,522/-collected for formation of society) within two months from the date of this order. In default the amount of Rs.57,76,024/- shall carry interest @12% per annum from the date of this order till realisation.
- (iii) Opponent nos.1 to 6 are jointly and severally directed to pay to the complainant Rs.5,00,000/- (Rupees Five Lacs only) as compensation for inconvenience, harassment and mental agony suffered by the members of the complainant society.
- (iv) Opponent nos.1 to 6 are jointly and severally directed to obtain occupancy certificate, building completion certificate and handover all necessary documents to the complainant.
- (v) Opponent nos.1 to 7 are jointly and severally directed to do all necessary things for execution of conveyance in favour of the complainant within two months from the date of this order.

(vi) Copies of this order be given to the parties free of costs.

Pronounced on 24th October, 2018.

**[P.B. Joshi]
Presiding Judicial Member**

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

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