

State Consumer Disputes Redressal Commission

1. Mrs. Jyoti Ramesh Agrawal 2. Mr. ... vs Silver Riddhi Siddhi Chs Ltd. on 12 October, 2017

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STATE CONSUMER DISPUTES REDRESSAL COMMISSION,  
MAHARASHTRA, MUMBAI

Appeal No.A/14/845

(Arisen out of order dated 15/09/2014 In Complaint No.50 of 2013 of  
Addl. District, Mumbai Suburban)

1. Mrs.Jyoti Ramesh Agrawal,  
B-101, Silver Riddhi Siddhi CHS,  
Road No.5, Near Acharya Garden,  
Chembur,  
Mumbai 400 071.

2. Mr.Yashodeep Ramesh Agrawal,  
B-101, Silver Riddhi Siddhi CHS,  
Road No.5, Near Acharya Garden,  
Chembur,  
Mumbai 400 071.

.....Appellant(s)

Versus

Silver Riddhi Siddhi CHS Ltd.,  
Through its Secretary Mr.Sonpal Singh Saini,  
B701, Silver Riddhi Siddhi CHS,  
Road No.5, Near Acharya Garden,  
Chembur,  
Mumbai 400 071.

.....Respondent

BEFORE: Mr.D.R.Shirasao - Presiding Judicial Member  
Mr.A.K. Zade - Member

ORDER

Per Hon'ble Mr.D.R. Shirasao - Presiding Judicial Member:

(1) Being aggrieved by the judgment and order passed by the Ld.Additional District Consumer Disputes Redressal Forum, Mumbai Suburban, dismissing complaint on 15/09/2014, complainants have preferred this appeal.

(2) Brief facts of the case are as under:

A/14/845 2/13 Appellants/complainants filed complaint against opponents for providing parking space to them along with other amenities along with costs and compensation. Complainants submitted that, they had purchased flat No.B-101 by executing agreement on 22/01/2004. At that time the builder had promised to provide adequate parking facility to all the flat purchasers. Complainants submitted that the builder had allotted car parking space to various other flat

purchasers except the complainants. Complainants submitted that as per provisions of Maharashtra Ownership of Flats Act, a builder can only sell the flats and he cannot sell the common area, open balcony space present in the building. Complainants submitted that, all these common areas are handed over by builder to the society of the flat purchasers. They submitted that it is the duty of the society to provide car parking space to all the flat purchasers uniformly. Complainants also submitted that as per Development Control Rule, every flat purchaser, the carpet area of whose flat is exceeding 70 sq.meters is entitled to get one car parking space. They submitted that carper area of flat of complainant is 88 sq. meters and hence, he is entitled to get one car parking space. Complainant submitted that under these circumstances they had applied to opponent society for getting car parking space. On the application of complainants, society had called General Body Meeting. However, the Society had rejected the claim of complainants in respect of getting Car Parking space in the premises of the society. Hence, complainants submitted that they had issued legal notice to opponent society and as society had not complied the same they have filed this complaint. Complainants had also made many of the allegations in respect of construction of building and A/14/845 3/13 providing of amenities by the builder and had made the builder, their partners as parties to the proceeding. However, subsequently, they had deleted the builder and their partners from the complaint and contested the complaint only against the society in respect of getting parking space for them in the premises of the society. As Society refused to give car parking space to the complainants they also claimed costs and compensation from Society.

(3) Society contested the complaint by filing written version on record. Initially they submitted that the complaint filed by the complainants is barred by limitation. They submitted that complainants were the promoters/members of the society. After formation of society bye-laws of the society were approved in the year 2006. Complainants were the signatories to those bye-laws and accepted the same. At that time no parking space was given to complainants. They submitted that, hence, for filing complaint against society in respect of getting parking space cause of action had arisen in the year 2006. However, complainants had not filed complaint within a period of two years from the same. Hence, complaint filed by complainants is not tenable. They also submitted that parking space has already been allotted to other flat purchasers. Hence, they submitted that, if any parking space is allotted to complainants they will prejudicially affect the rights of other flat purchasers. They submitted that, under such circumstances, it is necessary for complainants to add all flat purchasers as parties to proceeding. Hence, they submitted that complaint is also not tenable for non-joinder of necessary parties. They submitted that complainants had not paid any amount for common areas and for getting common facilities including car A/14/845 4/13 parking space. In respect of allotment of flat to complainants, agreement was executed in between the complainants and the builder. At that time it was only agreed that common space present in front of the door of the flat of complainants will be used by the complainants as common space. At that time no agreement had taken place in respect of parking space with complainants. They submitted that in the year 2006 all the flat purchasers had come together and formed the co-operative society. Complainants were the promoters/members of the society. The society had prepared their bye-laws and got the same approved from all the members of the society. Complainants also accepted the same. They submitted that the parking space was allotted to the flat purchasers by the builder. After formation of society the members of the society had approved the same and hence, all the flat purchasers who had been given parking space by the builder continued to utilize the same. They

submitted that after letter given by complainants in respect of getting parking space General Body Meeting was taken by the society on 11/03/2012. In that meeting the proposal of complainants along with other proposals were placed before the members of the society. However, the resolution in respect of getting parking space to complainants was rejected by the members in majority. They submitted that, hence, the decision of the society was informed to the complainants. Hence, they submitted that there is no deficiency in service given to the complainants by the society. Hence, the complaint filed by the complainants against society be dismissed.

(4) Considering rival contentions of parties, evidence adduced by them on record along with documents, the Ld.District Forum by A/14/845 5/13 passing order on 15/09/2014 had come to the conclusion that parking space was already allotted to the flat purchasers by the builder and society was not concerned in respect of allotment of the same and hence, no deficiency in service was given by society to the complainants. Hence, Ld.District forum dismissed the complaint of complainants. Being aggrieved by the same, complainants have preferred this appeal.

(5) Heard Ld.Advocate appearing for appellants. He submitted that complainants had purchased Flat no.B-101 in that building. The same is having carpet area of 88 sq.meters. He submitted that as per D.C. Rules every flat owner having carpet area of his flat more than 70 sq.meters is eligible for getting parking space. He submitted that the parking space and other common space present in that building was required to be handed over by the builder to the society. Builder had no right to allot or sell the parking space present in the premises. He submitted that it was the duty of society to allot the car parking space as per the bye-laws of the society. He submitted that as per bye-laws of the society also complainants are entitled to get parking space in that premises. He submitted that, hence, in the year 2012 complainants had applied to the society for getting parking space in the premises. However, the society had rejected the claim of complainants and hence, the complainants have filed this complaint. He submitted that, however, Ld.District Forum had not considered all these facts and rejected the complaint filed by the complainants. Hence, he submitted that appeal be allowed and complaint filed by complainants be allowed and society be directed to give parking space to complainants along with costs and compensation.

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(6) Ld.Advocate appearing for appellants/complainants for that purpose relied on following rulings:

- (i) 2010(9) SCC 536, Nahalchand Laloochand Pvt. Ltd. V/s. Panchali Co-operative Housing Society Ltd.

In this case, the Hon'ble Supreme Court observed that, "Promoter/builder has no right to sell any portion of the building which is not a flat, within the meaning of Section 2(a-

1), the builder has to convey the entire land, building and the common space present in the premises to the society. They further observed that, "as parking space is a common space used by all the flat

purchasers, builder has no right to sell the same or to allot the same".

(ii) 1986-2004 Consumer 7844 (NS), the Secretary Thirumurugan Co-operative Agricultural Credit Society V/s. M. Lalitha (Dead) through Lrs. and Others.

In this case, the Hon'ble Supreme Court had come to conclusion that dispute between the members and the co- operative society can be agitated before the Consumer Fora and provisions of Section 90 of Tamil Nadu Co-operative Societies Act, 1983, will not prohibit the members from filing such dispute before Consumer fora.

(iii) Order passed by this Commission in First Appeal No.A/14/290 on 18th June, 2014 in the matter of Mr.Najmul Hasan Rizvi V/s. M/s. Lokhandwala Shelters India Pvt.

In this case, this Commission by keeping reliance on the A/14/845 7/13 observations made by the Hon'ble Supreme Court in the case of Nahalchand Laloochand Pvt. Ltd. V/s. Panchali Co- operative Housing Society Ltd., had observed that the builder/developer cannot sell parking spaces and complaint filed by complainants in respect of the same can be heard by the Commission.

(iv) Order passed by this Commission in First Appeal No.A/12/46 on 25th October, 2013 in the matter of Dinshaw Trapinex Builders (P) Ltd. V/s. Mr.Firoz N. Khan & Anr.

In this case also by keeping reliance on the observations made by the Hon'ble Supreme Court in the case of Nahalchand Laloochand Pvt. Ltd. V/s. Panchali Co-operative Housing Society Ltd., had observed that promoter/builder has no right to sell the parking spaces.

(7) Heard Ld.Advocate appearing for the respondent/opponent. He submitted that all the parking spaces present in the premises of the building were already allotted by the builder prior to 2006. He submitted that, in the year 2006 the flat purchasers had formed the society. Complainants were the promoters/members of the society. At that time a list of flat purchasers was prepared to whom builder had allotted car parking space. Complainants were having knowledge of the same and complainants have filed the same along with the complaint. He submitted that, however, at that time complainants had not taken any objection. He submitted that, after formation of society the bye-laws of the society were also approved by the members of the society in the year 2006. At that time all the members of the society had approved the allotment of parking spaces given by builder to flat purchasers.

A/14/845 8/13 Complainants had attended that meeting and they were having knowledge of the same. However, at that time also they had not taken any objection. Hence, he submitted that complaint filed by the complainants in the year 2012 is not tenable and the same is barred by limitation. He submitted that after allotment of parking spaces by the builder to different flat purchasers, now, there is no parking space available for giving the same to the complainants. He submitted that when complainants had given application for allotment of parking space to them, again a General Body Meeting was taken. In the General Body Meeting of the members it was resolved that, for allotting parking space to complainants inconvenience cannot be made to all other

flat purchasers who are already in possession of parking space. Hence, the proposal of complainants for getting parking space was rejected by members in majority. Hence, he submitted that, if parking space is allotted to complainants, other flat purchasers will be affected by that order and hence, they are necessary parties to the proceedings. He submitted that, in absence of other flat purchasers complaint filed by complainants only against society is not tenable. He submitted that, as allotment made by builder was approved by the members of the society, complainants cannot take objection about the same. He also submitted that, as now there is no parking space available, complainants are not entitled to get the same. Hence, he submitted that the complaint filed by complainants was rejected by the Ld. District Forum after considering all these facts. Hence, he submitted that appeal be dismissed.

(8) Perused record of the case. On perusal of the same it has become clear that complainants have purchased Flat No.B-101 for valuable consideration as per agreement dated 22/01/2004. The A/14/845 9/13 copy of agreement is produced on record. As per this agreement carpet area of the flat of the complainants is 88 sq. meters, equivalent to 946.88 sq.ft. In this case complainants were not given parking space in the premises of the building either by the builder or the society. Hence, complainants had applied on 09/01/2012 to Society for allotting parking space to them. However, society had rejected the claim of the complainants in respect of getting parking space. As complainants have purchased flat they are beneficiaries, in respect of the common space present in the premises of the building including parking space. As society has not given parking space to complainants a deficiency of service is given to complainants by them. Hence, we are of the opinion that the complainants were entitled to file the complaint in that respect against society.

(9) The Ld. Advocate appearing for respondent/opponent has mainly contested the appeal on the ground that appeal is not within limitation. In this case, complainants have purchased flat as per agreement dated 22/01/2004. It is the contention of respondent that after purchase of flat by different flat purchasers they had formed a society in the year 2006 and in the year 2006 the society had also approved the bye-laws of the society. It is the contention of Ld. Advocate appearing for respondent that complainants being promoters/members of society they were having knowledge of the same and they were also having knowledge that as per those bye- laws parking space was not given to them. Hence, it is his contention that complainants were required to file this complaint within a period of two years. However, they have filed the same in the year 2013 and hence, the same is not within limitation. However, contention of Ld. Advocate appearing for respondent in A/14/845 10/13 that respect cannot be accepted. It is true that in the year 2006 when society was formed and bye-laws of the society were approved at that time no parking space was given to complainants. However, in that respect complainants had not made any specific demand to the society. However, in respect of getting parking space complainants made specific demand with the society in the year 2012. Society had also considered the application made by complainants and had called General Body Meeting on 11/03/2012. In this meeting the claim of the complainants was rejected by the members of the society by disallowing the application by majority. We are of the opinion that, this decision was informed by the opponent society to the complainants by giving letter to them. Hence, we are of the opinion that, since that date cause of action will arise to the complainants to file this complaint and complainants have filed the complaint within a period of two years from the same. Hence, complaint filed by the complainants is within limitation and the same

is tenable.

10) The Ld. Advocate appearing for opponent had also mainly contested the claim of the complainants on the ground that, if claim of complainants is considered then all other flat purchasers will be affected and hence, all flat purchasers are necessary parties to the present case. He submitted that complaint filed by complainants is bad for non-joinder for necessary parties. We are of the opinion that, contention of Ld. Advocate appearing for the respondent/opponent in that respect also cannot be accepted. The society is of all the flat purchasers and society is responsible for all of them. In respect of allotment of parking space decision is to be taken by the society. Under such circumstances, it was not A/14/845 11/13 necessary for complainants to file complaint against all members of the society and the same is tenable only against the society.

11) In this case, it is admitted fact that the builder had allotted all the parking spaces to various flat owners. In view of the observation made by the Hon'ble Supreme Court in the case of Nahalchand Laloochand Pvt. Ltd. V/s. Panchali Co-operative Housing Society Ltd., the promoter/builder has no authority to sell or allot any common space. He has authority to sell flats only. When conveyance of entire land and building including common space is made in the name of society the common space present in the premises including car parking space goes to the society and society has to take action in respect of allotment of parking space to different flat purchasers. However, in this case, it appears that, after formation of society in the year 2006 the bye-laws of the society were approved by the Society. At that time the allotment of car parking spaces made by builder to different flat purchasers were also approved by the members of the society. However, we are of the opinion that, that decision will not disentitle complainants from getting parking space in the premises of the society. In this case, it is pertinent to note that the carpet area of the flat of complainants is 88 sq. meters. As per D.C. Rules, a flat having carpet area of more than 70 sq. meters is entitled to get parking space. Hence, as such, complainants are entitled to get parking space in the premises of the society. It is the contention of the respondent/opponent society that, for allotment of parking space to different flat purchasers, no parking space is now available in the society and hence, society is not in a position to give car parking space to complainants. For that purpose they mainly relied on the bye-laws of the society in respect of A/14/845 12/13 allotment of parking space to the members of the society. The relevant bye-laws are from nos. 78 to 85.

12) As per bye-law no. 81, a member who is having motor vehicle and eligible for getting car parking space the same can be allotted to him. In this case, there is no dispute that complainants own a car and they are also entitled to get car parking space in the premises of society as per the carpet area of their flat.

13) As per bye-law no. 82, when number of vehicles of eligible members are in excess then available parking space is to be allotted by lot on yearly basis. As per this bye-law, a flat purchaser who is entitled for getting parking space cannot be denied from giving the same. Under such circumstances, we are of the opinion that, the society is required to give one parking space to complainants. If parking space is available in the premises of the society they can give parking space from that space to complainants. If parking space is not available then society has to take action and to give parking space to complainants by lot on yearly basis. However, in any case, they cannot deny

the complainants from giving parking space. We are of the opinion that, the Ld.District Forum had not considered all these facts in prospective manner and had wrongly dismissed the claim of complainants. Hence, appeal is to be allowed by directing the respondent/opponent to give car parking space to complainants along with costs and compensation. Hence, we proceed to pass the following order:

ORDER

(i) Appeal is hereby allowed.

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(ii) The order passed by the Ld.District Forum in Complaint No.50 of 2013 on 15/09/2014 is hereby set aside.

(iii) The complaint filed by complainants is hereby partly allowed.

(iv) The respondent/opponent society is hereby directed to allot one car parking space to complainants from the common space available in the premises of the building.

(v) If no common space is available in the premises of the society for giving to complainants for their car parking then society should take decision for allotting car parking space to complainants by lot on year to year basis.

(vi) As opponent society has denied car parking space to complainants, opponent society is directed to pay to the complainants compensation of Rs.1,00,000/- along with costs of Rs.10,000/- in respect of complaint and this appeal.

Pronounced on 12th October, 2017.

[D.R.Shirasao] Presiding Judicial Member [A.K.Zade] Member ep