

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

Complaint Case No. CC/04/16

1. Shri Rajendrakumar Shivkisanji Agarwal,
2. Smt. Premlata Rajendrakumar Agarwal,
Both residing at Shyamkamal, Building A,
Tejpal Road, Vile Parle,
Mumbai 400 057
(Through Constituted Attorney).

.....Complainant(s)

Versus

1. M/s.Rushi Construction Co.,
Krishna Kunj, Smruthi, Ground Floor,
Parleshwar Road, Vile Parle,
Mumbai 400 057.

2. Mr.Anil Shah,
Plot No.274, 'Ashiyana',
Acharya Niwas, Park Road,
Vile Parle, Mumbai 400 057.

3. Mr.Yashwant Ashar,
Gyandeep Society,
Gulmohar Cross Road, No.7,
Juhu, Mumbai 400 049.

.....Opponent(s)

BEFORE:

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

For the Complainant(s): Advocate Ms.Supriya Patil i/b Advocate Mr.Uday Wavikar

For the Opponent(s): Advocate Mr.Manoj Mhatre.

ORAL ORDER

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

- (1) Heard Advocate Ms.Supriya Patil for complainants and Advocate Mr.Manoj Mhatre for opponents.
- (2) Complainants have booked entire 6th floor in Indira Apartment to be constructed on City Survey No.484, Tejpal Scheme Road No.4, Ville Parle (East), Mumbai, for consideration of Rs.32,00,000/- with the opponents. Opponent no.1 is a partnership firm and opponent nos. 2 and 3 are partners of opponent no.1. Agreement was executed, entire consideration was paid and possession was also given. However, some work in the flat was not done and hence, complainants have done that work and claimed that amount. The opponents have not obtained occupancy certificate, building completion certificate and have not handed over legal possession and hence, consumer complaint is filed with the prayer claiming Rs.56,70,237/- and interest thereon. However, at the time of final arguments one affidavit is filed by complainants contending that complainant is not claiming any monetary relief though mentioned in the prayer clause. Other reliefs sought in the complaint for directing the opponents to obtain full occupancy certificate, building completion certificate and to handover legal possession and direct the opponents to form the society and convey the suit property in favour of the complainants.
- (3) Opponent nos.1 and 2 have filed their written version. They have not disputed about the booking of the flat, agreement, handing over of possession. However, they contended that the prayer as sought by the complainants cannot be granted as there is no averment about it in the body of the complaint. It was contended that in view of the nature of those prayers complainants cannot claim those reliefs as they are not claiming those reliefs in representative capacity. It was

contended that complainants cannot claim conveyance in favour of the complainants and hence, opponents prayed for dismissal of the complaint.

- (4) Opponent no.3 did not appear even after service of notice. Even otherwise opponent no.3 is a partner of opponent no.1.
- (5) Considering the rival pleadings of the parties, considering the submissions made before us, considering the affidavit filed by the complainant mentioning that the complainants are not claiming any monetary relief 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 there is deficiency in service on the part of the opponents?	:	Yes.
(ii)	Whether complainants are entitled to get occupancy certificate, building completion certificate, society formation and conveyance from the opponents?	:	Yes.
(iii)	What order?	:	As per final order.

Reasons:

Point No.(i) 'deficiency':

- (6) Complainant claimed full occupancy certificate, building completion certificate, formation of society of the flat purchasers in the building and conveyance deed. Admittedly, the opponents have not obtained full occupancy certificate, not obtained building completion

certificate and have not formed society and conveyance was not executed in favour of the society which is statutory obligation. Thus, it is very clear that there is deficiency in service on the part of opponents. Hence, we answer point no.(i) in affirmative.

Point No.(ii) ‘occupancy certificate, building completion certificate, society formation and conveyance:

- (7) Advocate for the opponents tried to argue that though the prayers are there, averments are not made in the body of the complaint. Advocate for the complainants has submitted that they have mentioned in the complaint that for providing legal construction that includes everything. Apart from this submission it is very clear that it is the statutory duty of the opponents to obtain full occupancy certificate, building completion certificate, formation of society and to convey the property in favour of the society. So, even in absence of any pleading there is prayer, it has to be accepted and opponents cannot deny all these things as these are the statutory obligations.
- (8) Ld.Advocate for the opponents has submitted that Conveyance Deed cannot be given to the complainants. It was also contended that complainants alone cannot ask this relief as complainants have not filed the complaint in representative capacity. However, advocate for the complainants contended that as per judgment of this Commission wherein the consumer complaint was filed not by the society but by individual flat purchaser and the prayer was for occupancy certificate, building completion certificate and for conveyance deed. Those prayers were granted by this Commission in Consumer complaint No.CC/07/6. Then the Revision Petition was preferred against that order before the Hon’ble National

Commission and the Hon'ble National Commission has dismissed the Revision Petition and thus the said order becomes final.

- (9) In view of the said judgment of this Commission and judgment of the Hon'ble National Commission and in view of the legal position that these are the statutory obligations on the part of the opponents, we find that anybody out of flat purchasers can ask for those reliefs. Though conveyance is asked by complainants in favour of the complainants that cannot be granted in favour of individual. Law says that the builder developer to form society of the flat purchasers and convey the property in favour of the society. Here though complainant is claiming that the conveyance be granted in favour of the complainants that cannot be granted but conveyance can be granted in favour of the society which is statutory obligation of opponents. Hence, we answer point no.2 accordingly.
- (10) In view of answer to point nos.(i) and (ii) 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) payable by the opponents jointly and severally to the complainants.
- (ii) The opponents are jointly and severally directed to obtain occupancy certificate and building completion certificate from the local authority.
- (iii) Opponents are jointly and severally directed to form the society of the flat purchasers in the said building and to convey property in favour of the said society.

- (iv) The opponents are jointly and severally directed to comply the above statutory obligations within two months from the date of this order, otherwise, opponents shall pay Rs.500/- (Rupees Five Hundred Only) per day to the complainants.
- (v) Copies of this order be given to the parties free of costs.

Pronounced on 23rd October, 2018.

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

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

ep