

JUDGMENT

PER : Hon. Member, Ms. PREETHI CHAMIKUTTY

1. The present complaint is filed under Section 12 (1) (a) of Consumer Protection Act 1986 by Complainant praying for directions to Opposite Parties (O.P.) 1 to 5 to comply with their statutory obligations, refund the amount collected towards Conveyances charges, handover all original documents concerning construction of Building, alongwith compensation and costs.

2. Brief facts of the complaint is as under :

a) Complainant is a registered society under Co-operative Societies Act, Opposite Party No.1 (O.P.1) is a Partnership Firm and O.P.2 & 3 are partners of the partnership firm. O.P.4 & 5 are representatives of Deceased Ramlal Vats land owners/Promoter. Opposite Parties had undertaken project of development of piece or parcels of land or ground together with structure standing being S.No.56. Hissa No.1(Part), S.No.56 Hissa No.2(Part), S.No.56 Hissa No.6A situate, lying and being at Village Mogra in South Salsette Taluka of Bandra, Andheri (E), Mumbai -59 into a building namely 'Sterling Centre Premises'. Complainant states that from time to time, original and current office purchasers on payment of entire consideration purchased and therefore occupied their respective office in said building in year 1990. Copy of one Agreement of sale is at Annexure C1 of complaint. Complainant's state that on several occasion requested and remained Opposite Parties about various

defects, non-compliance of statutory & contractual obligations, to which Opposite Parties orally promised to look into the matter.

b) Complainant states that as per Maharashtra Ownership of Flats Act 1963 Opposite Parties were under mandatory obligation to get building registered into a co-operative society, however they failed to take any steps despite receiving sum of Rs.1761(1500/- + 261/-) total Rs. 33,459/- from Complainant members towards Society Registration, Conveyance charges. In 1991 Complainant members collectively got their own building "Sterling Centre Premises" registered into a co-operative society on 21.5.1991. Copy of Society registration certificate dt. 21.5.1991 is at Annexure C2 colly. Complainant states that as per provisions of MOFA, mandatory obligation is imposed on Opposite Parties to execute Conveyance Deed in favour of Complainant society, which they have failed to do, and failed to transfer rights, title and interest in said land in favour of registered Housing Society, which amounts to Deficiency in service. Accordingly Complainant issued letters and legal notices on 18.8.2012 to Opposite Parties, which copies are at Annexure C3 colly of complaint.

c) Therefore fed up of no response and lethargic approach of Opposite Parties, Complainant has approached this Forum for directions to Opposite Parties and to submit to Complainant the documents mentioned below, namely – (i) Conveyance deed/ Deed of Assignment

(ii) Ledger extract 7/12 & 6/12 (iii) Order of Non Agriculture (NA order)

- (iv) Building approved plan (iv) Intimation of disapproval (IOD)
- (v) Building Commencement certificate (vi) BCC/ BOC
- (vii) Building Occupation certificate
- (ix) Old conveyance deed from previous owner
- (x) Non-agriculture tax paid receipt
- (xi) Certificate under Urban Land Ceiling Act 1976
- (xii) Chain of document through which vendor acquired right, title and interest in property
- (xiii) Title clearance certified from vendor's advocate
- (xiv) Any other document in respect of above land and building.

d) Complainant therefore prays that its prayers be granted alongwith interest, compensation and costs. One application made by Complainant seeking permission for impleadment of O.P.2 & O.P.3 was allowed vide order dt. 14.2.2013.

3. After admission of complaint, notice was issued to all Opposite Parties. O.P.1 & 2 filed their Written Statement, however O.P.3 failed to appear in the matter and therefore ex-parte order was passed against O.P.3 on 16.4.2013 and against O.P.4 & 5 on 05.11.2014.

4. O.P.1 & 2 have filed a joint Written Statement, O.P.1 states that being partner of O.P.1 and on behalf of O.P.2, he is personally aware of facts of the matter and competent to depose.

O.P.1 & 2 state that the issue of conveyance of land is pending in Hon'ble High Court of Bombay in Suit No. 3320 of 1985, and Complainant has already applied as Intervener to be impleaded as Defendant No.5 by taking out Chamber Summons No. 505 of 2012 on 30.3.2012. After nine months of the said Chamber Summons, Complainant has filed present complaint in this Forum in January 2013. Copy of Chamber Summons No. 505/2012 is at Exh-A of W.S. O.P.1 & 2 state that if the matter is decided in their favour, then they have legally and rightly got conveyance as per Agreement in Para VI and VII, and in such an event, grave injustice would be caused to them if present complaint is decided before decision of Hon'ble HC of Bombay(hereinafter referred to as "**BHC**"), and hence it is a fit case to be dismissed, as matter is subjudice before Hon'ble HC of Bombay.

5. O.P.1 & 2 further state that by not disclosing the High Court proceedings Complainant has approached this Commission with unclean hands. O.P.1 & 2 also state that the conditions mentioned in the Agreement requires examining witnesses and also taking cross-examination, which cannot be done in Summary proceedings and only City Civil court is competent to go through detail before proceeding in the matter. O.P.1 & 2 state that as the matter is subjudice, jurisdiction issue be decided by framing preliminary issues. O.P.1 & 2 state that Complainant has not followed proper filing procedure, present complaint is gross abuse of process of law and misuse of provisions of Consumer Protection Act 1986, hence it should be dismissed. O.P.1 & 2 state that issues involved in present complaint requires impleadment of necessary parties to lead

evidence, and ought not to be dealt on basis of mere pleadings in present complaint in summary manner. O.P.1&2 state that Complainant is very well aware that entire land is required to be conveyed to M/s. Reliance Consultancy Services as per agreement dt. 22.10.1981, who will grant a lease in favour of Complainant society, which issue is subjudice in Suit No. 3320/1985 and until the said suit is disposed off conveyance cannot be done in favour of M/s. Reliance Consultancy Services. O.P.1&2 further state that Complainant is aware that they are not entitled to conveyance of land, but for lease deed for 99 years from M/s. Reliance Consultancy Services and not M/s. Metropolitan Investments, and Complainant has reason to complain only if the pending suit is disposed off and they are unable to get lease deed in their favour. O.P.1&2 further state that they are not competent to grant lease to Complainant and it is M/s. Reliance Consultancy Services who can grant lease, hence prays for dismissal of present complaint and grant of damages.

6. Remaining all averments in the complaint have been denied by O.P.1&2, who also deny having received any amount of registration charges and conveyance charges from Complainant. With reference to Para 8 of complaint, O.P.1 & 2 state that although they have agreed as per agreement of sale, as matter is sub-judice they are required to await decision of BHC. O.P.1&2 state that Complainant at the same time cannot approach two separate courts, as he has already applied to BHC which is the competent authority to decide the same. Remaining all the averments made in complaint is

denied by O.P.1&2 who pray for dismissal of complaint with cost, or stay till final decision of BHC.

7. Complainant has filed their Affidavit of Evidence where it has reiterated the averments made in complaint. Complainant deny that any matter is sub-judice before BHC, as the parties involved in the complaint and those in matter before BHC are different, further the issue involved therein is Conveyance of whole land under specific performance of Agreement entered into between parties, while the issue involved in present complaint is only Conveyance of land on which building of Society is situated, therefore the contention is wrong, made with an intention to distract mind of the Forum. Complainant state that as per Agreement, it was pertinent for builder to execute conveyance in favour of Society, and what transpired between Builder and Owner is nothing to do with Complainant Society, which as per clauses of Agreement Opposite Party has clearly and unequivocally agreed to do, therefore there is no requirement to examine witness. Complainant state that prayer in present complaint, which is about grant of conveyance is as per Statutory Obligation and Agreement, and the dispute in Suit No. 3320/1985 is internal dispute between Landlord and Builder, which has nothing to do with Complainant society as O.P.1 & 2 are well aware of provisions of MOFA when Agreements were executed, and now he cannot make any excuse under garb of pending suit. On the point of granting lease, Complainant states that if the land is freehold, then O.P.1 & 2 must convey the land freehold, and put them to strict proof. Complainant further states that if O.P.1 & 2 are not competent

to grant lease, then how they have taken Development rights and constructed building and sold flats. Hence such objections have been raised to divert mind of this Forum. Remaining all averments made in Written Statement is denied by Complainant. They state that Opposite Parties have received Registration and Conveyance charges from Complainant society, and deny that the issue pending before BHC is totally different, and pray for grant of prayers. Rest all the averments made in Written Statement is denied by Complainant.

8. O.P.1 & 2 have also filed their Affidavit of Evidence, wherein they have stated that Suit No. 3320/1985 which was pending before BHC has been transferred to Hon'ble City Civil Court Mumbai and pending for disposal. O.P.1&2 also state that in case of Complainant's prayers for conveyance, the total consideration value of all flats in Complainant Society is to be considered, and such consideration value is more than 20 lakhs, hence this Forum does not have pecuniary jurisdiction to entertain this complaint. Rest all the averments in their Affidavit of Evidence is a repetition of written statement.

9. Complainant thereafter moved an application for production of documents of all papers in Suit No.3320 of 1985. To the said application O.P.1 & 2 have filed their reply stating that Complainant has received all papers in the said suit, owing to which they have filed the Chamber Summons no. 505/2012, and the said application is nothing but to waste time of this Forum. The said application was dismissed vide order dt. 17.02.2022 of this Forum.

10. Complainant have filed their Written Arguments which is a repetition of averments made in complaint. In their Written Arguments, Complainant has also replied to the issue of Pecuniary Jurisdiction raised by O.P.1 & 2 belatedly in their Affidavit of Evidence, which was not stated in their Written Statement. Complainant further state their prayer for conveyance is a statutory obligation under statute hence the notional value is to be taken and not value of flats. Complainant points out that the issue in dispute between parties in suit before BHC is under specific performance of Agreement entered into between parties therein, while the dispute in present complaint is with regards to conveyance of land on which the building of society is situated, and this contention has been raised by Opposite Parties only with an intention to distract mind of this Forum. As parties to Suit No. 3320 of 1985 is different from parties to present complaint, ingredients of Res Judicata is not satisfied and hence not applicable to present complaint, and hence there is no need to wait for disposal of suit. Complainant states that Agreement clearly mentions that Builder shall cause Owner the conveyance to be executed in favour of Complainant society, which has also been admitted by O.P.1 & 2 in their Written Statement, hence it does not require examination of witness. Complainant states the fulfillment of statutory obligation is not complicated questions of law, and O.P.1 & 2 had full knowledge of provisions of MOFA when they entered into Agreements with members of Complainant society. Complainant further states that as land is freehold, the question of lease doesn't arise, and O.P.1 & 2 must convey land freehold only. Complainant states Opposite Parties have received Registration

Charges and Conveyance charges from them, and therefore prays for complaint to be allowed as prayed for.

11. O.P.1 & 2 have repeated the averments made in their Written Statement, and state that as per Agreement dt. 22.10.1981 it is agreed between O.P.1 & 2 and Reliance Consultancy Services Private Limited that after construction of building named Sterling Centre Premises, O.P.1 & 2 will convey land in name of Reliance Consultancy Services Private Limited, and they will transfer land to Complainant on lease basis. However as Complainant has failed to make Reliance Consultancy Services Private Limited a party in present complaint, they should demand their rights of leasehold from Reliance Consultancy Services Private Limited and not Opposite Parties. O.P.1 & 2 say that since Suit related to conveyance of land is pending before Hon. City Civil court, only Reliance Consultancy Services Private Limited is eligible to transfer land in name of Complainant on lease basis, and until the matter is pending, the Suit land cannot be transferred. O.P.1 & 2 further state that as per Agreement dt. 22.10.1981, the land alongwith construction is not yet conveyed in favour of Reliance Consultancy Services Private Limited, therefore as first transaction is not completed, the question of transferring land in name of Complainant on lease basis does not arise. O.P.1 & 2 state that as suit is pending before City Civil Court Mumbai, they have no right to transfer land in name of Complainant, as such transfer of land may lead to Contempt of Court and make the suit before City Civil Court Mumbai infructuous. O.P.1 & 2 state that Hon'ble City Civil Court Mumbai has dismissed Chamber Summons

No. 505/2012 filed by Complainant as there is no privity of contract between Complainant and Reliance Consultancy Services Private Limited, hence Complainant has no right to file present complaint in this Forum. O.P.1 & 2 state that Articles of Agreement dt. 19.10.1988 is binding on Complainant, which is a standard Agreement as per MOFA, and articles of the said Agreement clearly state that Opposite Parties will convey land in name of Reliance Consultancy Services Private Limited along with Construction i.e. the building of Complainants, and they will transfer the land in name of Complainant on lease basis. O.P.1 & 2 refer to clause 1(b) on Page No.4 of Agreement. O.P.1 & 2 have referred to judgment in F.A./13/9 Ashwini Sah. Rugnalaya & Sandodhan Kendra Niyamit Solapur v. The Oriental Insurance Co. Ltd. passed by Hon. State Commission Mumbai, and Writ Petition No. 8493 of 2014 Geeta Bhaskar Pendse v. Brahma Chaitanya CHS Ltd. passed by Hon. BHC – which judgment copies have also been tendered by O.P.1 & 2. They also make reference to Mazda Construction Company & Ors. and M/s. Shree Chintamani Builders v. State of Maharashtra & Ors. 2016 SCC Online Bom 9343 – however the copies of said judgment has not been provided by O.P.1 & 2 in present complaint. O.P.1 & 2 state that Agreement dt. 22.1.1981 is still in existence and not cancelled/set aside/revoked by any Parties to the Agreement nor by any Competent Court or Authorities. O.P.1 & 2 also state that this Forum have no right to rewrite agreement between parties as per Consumer Protection Act 1986. O.P.1 & 2 state that Agreement dt. 22.10.1981 is binding upon them and Complainant, alongwith Articles of Agreement dt. 19.10.1988, which matter is subjudice before City Civil Court

Mumbai. Complainant has also failed to make necessary party Reliance Consultancy Services Private Limited party to complaint, hence complaint ought to be dismissed with heavy cost.

12. After going through all documents in the matter and hearing Advocates for Complainant & Opposite Parties, the following points arose for our consideration :

Sr.no.	Points	Findings
1.	Whether this Forum has pecuniary jurisdiction to try present complaint?	Yes
2.	Whether Complainant proves deficiency of service and unfair trade practice on the part of Opposite Parties?	Yes
3.	Whether the Complainant is entitled to get reliefs they have prayed for?	Partly yes
4.	What order?	As per final order

REASONS

13. As to Point No. 1: On the point of pecuniary jurisdiction of a complaint, we opine that actual value of the property would not be of relevance in present case, as the matter at hand is about compliance of statutory obligations. Further we also rely on the discussion on the point of pecuniary jurisdiction done at length

by Hon. National Commission in the matter of Ambrish Shukla & Ors. v. Ferrous Infrastructure and of Hon. Apex Court in Civil Appeal No. 1779 of 2021 Brigade Enterprises Ltd. v. Anil Kumar Virmani & Ors. The main prayer in present complaint is for fulfillment of statutory obligations by Opposite Parties, which has admittedly not been done. Therefore in our opinion there is no bar of pecuniary jurisdiction for this Forum to try this complaint. We answer Point No.1 accordingly.

14. As to Point No. 2: The only defense taken by O.P.1 & 2 in present complaint is of a pending suit before Hon. City Civil Court Mumbai, wherein as per order dt. 16.1.2015 passed in Chamber Summons No. 505 of 2012, it can be understood that O.P.1 is the Defendant in main S.C. Suit No. 7822 of 1985, instituted by Plaintiff Reliance Consultancy Services Pvt. Ltd. The role of other Opposite Parties in the said suit is not clear from the said Chamber Summons, nor has O.P.1 & 2 given any clarification in the said respect in any of their pleadings.

15. The Complainant herein had attempted to join and be party to the said Suit before Hon. City Civil Court Mumbai, but the Chamber Summons of present Complainant came to be dismissed, and observations made in the dismissal order read as follows: *".....the plaintiff is a master of his own case and has to establish its case on basis of evidence and documents. As such, I am of the view that present applicant who neither disclosed that there was any privity of contract with the plaintiff in respect of the alleged agreement for sale nor could justify as to how it is a necessary party*

without joining it no effective decree can be passed in the present suit. Hence I do not find any merit in chamber summons.....”

16. Based on the aforesaid order, even we are of the opinion that the dispute in S.C. Suit No. 7822 of 1985 and present complaint are different, and there is no bar for Opposite Parties to perform their part of the contract entered into with members of Complainant Society. We refer to Articles of Agreement dt. 19.10.1988 entered into between one of the member's of Complainant Society and O.P.1 & 2, annexed in present complaint. We have gone through the Agreement on record and note that Clause (xi) of said Agreement is not in consonance with Clause (vii), as per Clause (xi) Opposite Parties were duty bound to form a *“.....corporate body in the form of a Co-operative Housing Society Ltd. and/or Co-operative Premises Society and/or a Limited Company, and cause the Owner to transfer the ownership of the said land to such corporate body and they the Builders shall transfer the ownership of the building to such corporate Body.....”*. Similarly there are other onerous clauses in the said Agreement which casts no liability on the Builders(Opposite Parties) and provides for their indemnity, but casts a liability on Complainant on different counts, which we opine is against the principle of natural justice and thereby we opine the said Agreement is one-sided. In this context, we rely on the discussion done by Hon. National Commission in *Nitin Pandey & Anr. vs M/S. Emaar Mgf Land Ltd. & Anr.* Such Agreements which cause excessive favour to one-side and does not protect the interest of other side, in our opinion have to be construed in a manner that can benefit the

party who is not in a bargaining-position, which in present case is the Complainant Society.

17. Further O.P.1 & 2 has also failed to produce any order from Hon. City Civil Court Mumbai in S.C. Suit No. 7822 of 1985 which stops them from granting conveyance to Complainant in respect of description of property stated in First and Second schedule of Agreement at Annexure C-1 of the complaint. Therefore we opine, there is no hindrance to O.P.1 & 2 and other Opposite Parties from carrying out their statutory obligation. O.P.1&2 in their pleadings have made reference to Agreements dt. 22.10.1981 and 15.3.1982 entered between O.P.1 & 2 and Reliance Consultancy Services Private Limited. According to O.P.1 & 2 the dispute between them and Reliance Consultancy pertains to certain rights and liabilities created in favour of other party in the aforesaid Agreements, and hence the outcome of S.C. Suit No. 7822 of 1985 is important to decide the point of granting conveyance to Complainant. But in the absence of said Agreements before us, we are not inclined to believe O.P.1 & 2, and opine that it is simply a delay tactic on their part to avoid completion of the statutory obligation that they hold in the present case.

18. Out of citations produced in present matter, the ratio in FA/13/9 & FA/13/10 – Ashwini Sah. Rughalaya & Sansodhan Kendra Niyamit Solapur v. The Oriental Insurance Co. Ltd.(supra) is not applicable to present matter, hence cannot be considered. As per the ratio of W.P. No.8493 of 2014 (supra), the view of being bound by

terms of Agreement between parties is in consonance with our opinion, laid out in detail hereinabove. Further in the exhibited Agreement, Clause 16 also records payments made by individual flat buyers to Builders toward different expenses, therefore averment of Complainant that all its 19 members have made a payment individually of Rs.1,761/- and total sum of Rs.33,459/- can be established. Under the circumstances, we opine that O.P.1 & 2 alongwith other Opposite Parties have been deficient in their service and have indulged in unfair trade practice. We answer Point No.2 accordingly.

19. As to Point No. 3 & 4–

Complainant is praying for reliefs which are in the nature of fulfillment of statutory duty by all Opposite Parties, along with compensation and costs. As discussed hereinabove, we opine O.P.1 & 2 along with other Opposite Parties are duty bound to complete their statutory obligation in respect of Complainant, and there is no hindrance for them in this respect as there are no adverse orders of Hon. City Civil Court Mumbai in S.C. Suit No. 7822 of 1985 filed on record on this aspect.

20. Further we opine that as per Clause 16 of Agreement at Annexure C-1, every member of Complainant Society had to pay certain amounts to Opposite Parties, which in case of Agreement at Annexure C-1 of complaint has been paid in full at the time of signing of agreement. Apart from plain denial O.P.1 & 2 have not brought any proof on record to show they have not received any payment from members of Complainant Society, while the Agreement at

Annexure C-1 is proof of payment made by the members. Hence on the basis of said Agreement it cannot be denied that O.P.1 & 2 would have collected society registration/Conveyance charges from Complainant members.

21. For failing to complete their statutory obligation O.P.1 & 2 and other Opposite Parties are liable to pay Complainant compensation and costs. As per clause (i), (ii), (iii) and (iv) of Agreement at Annexure C-1, it can be understood that O.P. 1 to 3 have all power and authority to fulfill all prayers as asked by Complainant in this complaint, hence we opine that O.P. 1 to 3 are liable for fulfillment of directions given in this judgment. We answer Point No.3 & 4 accordingly.

22. All pleadings in present case is made in English, hence the judgment is pronounced in English. Considering the facts and circumstances we proceed to pass the following order :

ORDER

1. The Consumer Complaint No. CC/4/2013 is partly allowed.
2. Opposite Parties 1, 2 & 3 are jointly and severally held guilty of deficiency of service and unfair trade practice.
3. Opposite Parties 1, 2 & 3 are jointly and severally directed to complete their statutory obligations and complete all formalities to convey the land described in Schedule 1 & 2 of Agreement at

Annexure C-1 of present complaint in favour of Complainant Society within three months from the date of this order.

4. Opposite Parties 1, 2 & 3 are jointly and severally directed to complete their statutory obligations and handover all original documents mentioned in Para 12 of the complaint, within three months from the date of this order.

5. In view of Rs. 33,459/- (Rs. Thirty Three Thousand Four Hundred Fifty Nine Only) having been received by Opposite Parties, if there are any further expenses to be incurred in respect of society registration/Conveyance charges, then such charges to be borne in the ratio of 70 : 30 by Opposite Parties 1 to 3 and Complainant Society. The said 70% charges is to be borne by Opposite Parties 1, 2 & 3 jointly and severally, while the 30% charges is to be borne by all members of Complainant society.

6. Opposite Parties 1, 2 & 3 are jointly and severally directed to pay Complainant Society Rs. 75,000/- (Rupees Seventy Five Thousand Only) towards compensation for failure to comply with their statutory obligation, within 2 (two) months from the date of this order.

7. Opposite Parties 1, 2 & 3 are jointly and severally directed to pay Complainant Society Rs. 50,000/- (Rupees Fifty Thousand Only) towards costs for pursuing this complaint, within 2 (two) months from the date of this order.

8. If Opposite Parties 1, 2 & 3 jointly and severally fail to comply with orders passed in Point Nos. 3 to 7 of this order, then Opposite Parties 1, 2 & 3 jointly and severally to pay additional cost of Rs.100/- (Rupees Hundred Only) per day for the delay until compliance.
9. Copy of the final order be given to all parties as per provisions of Consumer Protection (Consumer Commission Procedure) Regulations, 2020 Regulation 21(1) and Regulation 18(6).
10. Certified copy of the final order be given to all parties as per provisions of Consumer Protection (Consumer Commission Procedure) Regulations, 2020 Regulation 21(1) (3).

Date :- 15/03/2023

Place :- Bandra – Mumbai.

Sd/-

(Shraddha M. Jalanapurkar)

Member

Sd/-

(Preethi Chamikutty)

Member

gmp/-