

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
MAHARASHTRA, MUMBAI

Appeal No.A/16/388

(Arising out of order dated 31/10/2015 passed by D.F.Raigad in CC/14/57)

1. M/s.Patil Associates
2. Mr.Sunil Narayan Patil
Partner of M/s.Patil Associates
3. Mr.Sagar Pramod Patil
Partner of M/s.Patil Associates
At Patilwadi, Nagaon
Uran, District RaigadAppellants

Versus

Raj Sahakari Gruhnirman Sanstha
Maryadit
Shriraj Nagar, Kamtha RoadRespondent
Uran,Taluka Uran, District Raigad

BEFORE: Justice A.P.Bhangale, President
Dr.S.K.Kakade, Member

PRESENT: Mr.Bhaskar Yogi-Advocate i/b.Mr.Uday B.Wavikar-Advocate
for appellant.
Mr.Vinod Sampat-Advocate for respondent.

ORDER

Per Hon'ble Justice A.P.Bhangale, President

This appeal preferred by M/s.Patil Associates /original opponents, a partnership firm questioning validity and legality of impugned judgment and award in consumer complaint no.57 of 2014 decided on 31/10/2015 by Learned District Consumer Disputes Redressal Forum, Raigad at Alibag.

Briefly stated facts are that the complainant who is a registered Co-operative Housing Society lodged a complaint against the partnership firm of opponent, who had constructed the building at Survey no.81 & 79, Hissa

no.1/2(Part), admeasuring about 3365 sq.meters. According to complainant, builder/developer/promoter had entered into an agreement with the members of the complainant society, in which they agreed to provide basic amenities and facilities and to execute conveyance in favour of the society pursuant to their obligation under Maharashtra Ownership Flats Act, 1963 (In short 'MOFA'). According to complainant, the opponents were bound to construct the building in accordance with the approved/sanctioned plan, to complete the same in all respect, obtain Occupation Certificate and to convey the building with right, title and interest in the land, where the building is situated along with the building. It is case of the complainant that the opponents failed to execute conveyance in favour of the society and also to construct the building in accordance with the approved plan and to obtain the Occupation Certificate. Though the actual physical possession was handed over to the flat purchasers in the year 2010, no Occupation Certificate was obtained. It is under these circumstances, the society had approached the learned District Forum below, which held that the complainant society is a 'consumer' and the opponents were guilty of deficiency in service and were also responsible for unfair trade practice towards the complainant. The complainant society was eligible to claim damages for the inconvenience caused to its members and mental anguish for members. According to complainant society though promised, car parking was not provided to the flat purchasers and conveyance was not executed in favour of the society, though opponents had agreed to convey right, title and interest in the property in favour of the society of the flat purchasers.

Further according to complainant society, opponent indulged into illegalities in the construction and when PLI was filed in Hon'ble High Court, Bombay bearing no.106/2009 against the opponents, Hon'ble Bombay High Court had directed by order dated 16/04/2010 to the

opponents to remove illegal construction from the parking space. Learned Forum below mentioned the legal position that builder/developer/promoter shall take steps to register the Housing Society and execute conveyance in favour of the society. In other words, it is the duty of the builder/developer/promoter to obtain Occupation Certificate by removing illegality or irregularity, if any, in the construction so as to provide amenities and facilities as promised.

Although it is objected by the appellant that flat purchasers concerned have not preferred complaint, in our view considering the statutory obligation of the builder/developer/promoter under the MOFA, it is always duty of the builder/developer/promoter to take steps for formation of the Registered Co-operative Housing Society of the flat purchasers and to ensure that amenities and facilities as promised in the brochure shall be made available to the society in respect of the plot area under construction and parking amenities, etc. as agreed with the flat purchasers, who are members of the Co-operative Housing Society. The plea as to technicalities that there was no privity between the society and the builder/developer/promoter cannot be accepted in view of the statutory obligation on the part of the builder/developer/promoter as contemplated under MOFA.

It is for this reason, we are of the view that the opponents were rightly held blameworthy for deficiency in service and were rightly directed not to create any third party right in the building belonging to the complainant society. It is duty of the opponents to take steps towards formation of registered Co-operative Housing Society and to convey the right, title and interest in the building and the land to the Co-operative Housing Society consisting of various flat purchasers, who had agreed to purchase the flats. The Occupation Certificate shall be obtained after completion of the building constructed in accordance with the approved plan so as to abdicate future responsibility of maintaining the building duly constructed to the

society. That being so, compensation/damage awarded do not require interference at our hands in exercise of appellate jurisdiction, which appears limited to sum of Rs.2,50,000/- only. We do not see any reason to interfere with the impugned judgment and award, which appears just and proper in the facts and circumstances of the case. Hence, appeal is dismissed. No order as to costs.

Pronounced on 17th April, 2018.

[JUSTICE A.P.BHANGALE]
PRESIDENT

[DR.S.K.KAKADE]
MEMBER

Ms