

## ARUN APARTMENT FLAT OWNERS ASSOCIATION Vs ARUN APARTMENT (P) LTD.

**Court:** NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

**Date of Decision:** June 8, 1994

**Citation:** 1995 3 CPJ 149 : 1995 3 CPR 254

**Hon'ble Judges:** S.A.Kader , R.N.Manickam , Ramani Mathuranayagam J.

**Final Decision:** Complaint partly allowed

### Judgement

1. THIS is a complaint under Section 17 read with Section 12 of the Consumer Protection Act.

2. THE Opposite Parties have filed a writ W.P. 6763/93 on the file of the High Court of Madras and in WMP. 10709 /93 the Hon"ble Mr. Justice

Kankaraj has been pleased to pass the following order:

Proceedings in O.P. No. 490/ 92 on the file of the first respondent (S.C.D.R.C.) can be proceeded with and final order passed. However, the

final orders as and when passed shall not be implemented without the permission of this Court.

THE pre-facts of the complainant are these: THE complainant is an association of flat owners in Arun Apartments promoted by the first Opposite

Party and constructed by the second Opposite Party in Lakshmi Ammal St., Aminjikarai, Madras-29. THE complainant association has come

forward with this complaint alleging various deficiencies which we shall refer later and claiming compensation in the sum of Rs. 1 lakh.

The Opposite Parties in their joint counter have denied the deficiencies alleged.

Exhs. A-1 to A-4 are marked by consent. No document is filed on the side of the Opposite Party. Proof affidavits are filed. No oral evidence has

been let in.

3. THE point for consideration is whether there has been any deficiency in service and to what relief, if any, is the complainant entitled ?

Point: The complainant association has come forward with several allegations of deficiencies to which we shall now refer, with the defence put

forward by the Opposite Party.

(1) According to the complainant, the Opposite Parties promised to concrete the open area around the building and compound wall and also

undertake to cover the open space in the middle of the building with fiber glass roofing. But they failed to do so. It is categorically denied by the

Opposite Parties that they agreed to concrete the open space of the compound wall or to cover the open space in the middle of the building

without fiber glass roofing. Excepting for the averments in the complaint there is nothing to substantiate the claim of the complainant. This allegation

must, therefore fail.

(2) It is alleged that the Opposite Parties constructed a compound wall which is incomplete and the compound wall on the rear side of the building

has fallen apart. According to the Opposite Parties, the compound wall has been built as desired by the members of the association and the

allegation that the rear portion has fallen is denied. No evidence has been let in on the side of the complainant to substantiate this claim that the

compound wall has been lying incomplete or the rear side has fallen down. This claim must also fail.

(3) It is alleged that electrical work has not been done properly and many loose wires are hanging around and the concealed electrical wiring pipes

are open at the terrace end resulting in water seeping through these electrical connections to the rooms in the building which may also created

electrical shock on account of being soaked in rain water. This allegation is also denied by the Opposite Parties in paragraph 10 of their counter

and there is no evidence to substantiate this allegation.

(4) The next allegation is that the Opposite Parties failed to provide a separate electric meter for the use of electric energy in the common areas

and in the electrical pumpsets, as a result of which the flat owners are being charged in different tariff. This allegation is not specifically denied in the

counter. The promoters must install a separate meter for the use of electric energy for common purposes in addition to individual meters installed in

the flats of each allottee. The Opposite Parties will be directed to do so.

(5) According to the complainant, the Opposite Parties have not completed the work in the terrace and have left iron rods open with a view to

make further construction unauthorisedly and the weathering course is withered resulting in leakages in the third floor. While denying that there is

leakage, it is contended by the Opposite Parties that there is a building provision to put up further floors and hence leaving iron rods open does not

amount to any deficiency. This contention has to be accepted.

(6) The last contention is that the sales-tax collected from the members of the complainant association are not refunded to them. The question

whether the sales tax is liable to be paid for the flats constructed and allotted by promoters is a matter which is pending before the Court. The

Opposite Parties have undertaken to refund the money if ultimately it is held that no sales-tax is liable. This undertaking is recorded and there will

be an order accordingly.

4. THE only point which stands proved is the failure on the Opposite Parties to install a separate electric meter for the common use of electric

energy. Hence the claim for compensation in the sum of Rs. 3 lakhs is untenable.

In the result, we order as follows: (1) The Opposite Parties shall install a separate electric meter for the consumption of electric energy for common

areas for common use. (2) The Opposite Parties shall refund the sales tax to the members of the complainant association if it is ultimately held by

the Court that no sales tax is liable. (3) The other claims of the complainant are rejected. (4) The parties are directed to bear their respective costs.

Complaint partly allowed.