

(2016) 04 NCDRC CK 0014

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: 594 of 2013

VAIBHAV DEVELOPMENT
CORPORATION & 3 ORS.

APPELLANT

Vs

SURYODAYA CO-OPERATIVE
HOUSING SOCIETY LIMITED

RESPONDENT

Date of Decision: April 4, 2016

Acts Referred:

- Consumer Protection Act, 1986, Section 19 -
- Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1964, Rule 9

Citation: 2016 2 CPR 635

Hon'ble Judges: D.K. Jain, M. Shreesha

Advocate: Manoj P. Mhatre, Uday B. Wavikar, Vikas Nautiyal, Vatsalya Vigya

Judgement

1. This First Appeal, under Section 19 of the Consumer Protection Act, 1986 (for short "the Act"), has been preferred by a real estate developer, viz. M/s Vaibhav Development Corporation, a partnership firm and its partners, questioning the correctness and legality of the order, dated 19.7.2013, passed by the State Consumer Disputes Redressal Commission, Maharashtra at Mumbai (for short "the State Commission") in Complaint Case No.CC/11/88. By the impugned order, the State Commission, while partly allowing the complaint, filed by a Co-operative Society, formed by the flat owners in the Vaishali Nagar Complex, has directed the Appellant to: (i) obtain full occupancy certificate and execute conveyance deed of land and building in favour of the Complainant Society; (ii) pay an amount of 15,95,120/- with interest @ 9% per annum, in respect of excess water charges paid to the B.M.C. as they had failed to obtain occupation certificate from the local urban authorities; and (iii) pay costs of 62,000/- to the Complainant Society and bear their

own costs. The Appellants are obliged to comply with the said order within a period of two months, failing which they have been directed to pay an amount of 1,000/- per day till the date of compliance of the order. At the outset, we may note that on an application (IA No.26/2015) being filed by Appellant No.2,

2. Appellants No.3 & 4, initially impleaded as such, were transposed as Respondents No.2 & 3, respectively, vide order dated 20.1.2015.

3. Succinctly put, the material facts, giving rise to the present appeal are that: on 25.2.1994, an Agreement for Sale of flat was entered into between Appellant No.1 firm and the individual flat owners. One Vaishali Nagar Co-operative Housing Society Ltd., was confirming party to the said agreement for sale. On completion of the building, possession of the flats were delivered to the respective flat owners. All the flat owners formed the Respondent/Complainant Society on 26.2.2001. It was registered with the Registrar of Co-operative Society on 26.2.2001. The case of the Complainant was that at the time of handing over of the possession to the respective flat owners, they were given to understand that a full Occupation Certificate of the building had been obtained. They were getting regular water supply from the Municipal Corporation. However, vide letter dated 27.2.2003, the Corporation informed the Complainant that since no Occupation Certificate has been obtained for the building, their water supply shall be disconnected. On 16.3.2002 they received yet another communication from the Municipal Corporation that they would be charged for water supply with penalty, i.e., double the normal rates. Having failed to elicit any positive response from the Appellants regarding the Occupancy Certificate, as well as for execution of the Conveyance Deed in respect of the land and building in the name of the Society, under the provisions of the Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short "MOFA"), the Society filed a complaint, praying for a number of directions to the Appellants.

4. Despite service of notice in the complaint, for the reasons best known to them, the Appellants chose not to appear before the State Commission and defend the complaint against them. Consequently, they were proceeded against ex-parte . Hence, upon taking evidence by way of affidavit, the State Commission has issued the afore-noted directions observing thus:-

" On perusal of the prayer clauses, the Complainant has prayed for fulfilling their statutory contractual obligations by obtaining full occupation certificate, to execute conveyance deed in respect of the land and building, handover the copy I.O.D., Building Completion Certificate and relevant papers. The prayer of the Complainant in respect of payment of excess water charges amounting to Rs.15,95,120/- is the result of the failure of the Opponents to discharge their statutory contractual

liabilities. The Complainants have prayed for interest @ 24% per annum on the amount, however this is exorbitant. In our opinion, the rate of interest @9% per annum will meet the ends of justice. Apart from these prayers, the Complainants have claimed Rs.6,20,000/- for the compensation for the inconvenience and hardships and Rs.62,000/- as costs. There is a prayer for the fitness certificate of the lift. However, taking into consideration the life of the lift, the prayer is time barred. As we are allowing the payment of excess water charges with interest @9% per annum we do not think it proper to grant Rs.6,20,000/- towards compensation for the inconvenience and hardships. The Complainants have proved their case beyond doubts and there is clear-cut deficiency in service on the part of the Opponents. Looking to the deficiency in service and the attitude of the Opponents towards law of land, we hold Opponents guilty of deficiency in service"

5. Hence the present appeal.

6. During the pendency of the appeal, with the intervention of this Commission, the Municipal Corporation, Grater Mumbai, vide their letter dated 2.1.2016, has issued permission to occupy the said building subject to certain conditions which had been conveyed to the Complainant Society vide letter dated 1.1.2016. When the appeal came up for consideration on 5.1.2016, it was stated by Learned Counsel appearing for the Appellants that his client will ensure that the conditions, as spelt out in the letter dated 1.1.2016 are complied with expeditiously. It is now stated before us that it will take about three years for the Appellants to comply with the conditions, mentioned in the letter dated 1.1.2016, issued by the Corporation to the complainant Society.

7. At this juncture, it is also pertinent to note that vide order dated 14.10.2014, it was directed that the Appellants shall make payment to the Complainant Society as per direction No.(ii), mentioned above in the opening paragraph, within two weeks from the date of the order. It was further directed that till the Appellants obtain Occupancy Certificate from the concerned Authorities, they shall continue to pay to the Complainant Society the excess amount of water charges, being paid by them to the Mumbai Municipal Corporation for want of Occupancy Certificate. It is stated before us that payment in terms of the said direction had been made except for some arrears, for which the complainant is in the process of raising demand from the Appellants. Learned Counsel for the Appellants states that as and when such demand is made, the same shall be paid within four weeks thereof and the Appellants will continue to pay the difference in the rate of water charges in terms of the order dated 14.10.2014 as and when any demand in that behalf is made.

8. We have heard Learned Counsel for the parties at some length and perused the documents on record.

9. In the light of the statement made on behalf of the Appellants that the directions contained in order dated 14.10.2014 shall be complied with, the only issue surviving for consideration is as to whether or not the State Commission was justified in directing the Appellants to obtain the full Occupancy Certificate and execute the Conveyance Deed in favour of the Complainant Society and on its failure to do so within the period stipulated in the order, pay to the Complainant a sum of 1,000/- per day till the said direction was complied with?

10. Learned Counsel appearing for the Appellants has vehemently submitted that the Complaint itself was not maintainable as Vaishali Nagar Co-operative Housing Society Ltd. and Smt. M.L. Misquitta , who were the confirming parties and the landlady respectively, were necessary parties but were not impleaded in the Complaint and further under the aforesaid agreement, the Appellants were obliged to execute Conveyance Deed only in favour of the said Vaishali Nagar Co-operative Housing Society Ltd. and not the Complainant Society.

11. Per contra , Mr. Wavikar Learned Counsel appearing for the Complainant Society, while referring us to sub-para (k) of Para 18 of the Agreement for Sale, dated 25.2.1994, and Section 3, 10 and 11 of MOFA, has submitted that the cumulative effect of these provisions is that the Appellants were obliged to take steps for formation of a Co-operative Society consisting of all those who had purchased the flats and execute the Conveyance Deed in favour of the Society but in the present case, on account of the failure of the Appellants to take steps for formation of a Co-operative Society, the flat owners themselves formed the Society and got it registered on 26.2.2001. Nevertheless, the Appellants are under legal obligation to obtain full Occupancy Certificate and execute the Conveyance Deed in favour of the Complainant Society.

12. Having bestowed our anxious consideration to the facts at hand, we are of the opinion that there is no merit in the Appeal.

13. In so far as the objection regarding the maintainability of the Complaint, on the plea that the afore-noted two parties had not been impleaded in the Complaint is concerned, we of the view that having failed to put in appearance before the State Commission, despite service of notice in the Complaint, it is now too late in the day for the Appellants to raise such a hyper technical objection, particularly when the covenants in the said agreement are not disputed by them. Accordingly, we reject the objection.

14. As regards the validity of the direction by the State Commission to the Appellants to obtain full Occupancy Certificate and execute Conveyance Deed in favour of the Complainant Society, having carefully perused the afore-noted

Provisions of MOFA read with Rule 9 of the Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1964, we are of the opinion that it is obligatory upon the Appellants to obtain a full Occupancy Certificate, without which a Conveyance Deed in favour of the Complainant Society, cannot be executed and thereafter execute the Conveyance Deed, within a reasonable time, which according to the said Rule has to be within four months, if no period of conveying the title to the Society is mentioned in the Sale Agreement. In the light of the said Statutory provisions, we do not find any illegality in the impugned direction.

15. Similarly, having regard to the fact that the Appellants have still not obtained a full Occupancy Certificate and executed the Conveyance Deed in favour of the Complainant, the default stipulation cannot be held to be unreasonable. However, bearing in mind the facts of the case, we direct that if the Appellants comply with the impugned directions within a further period of six months from the date of receipt of an authenticated copy of this order, the said default stipulation will not come into play.

16. The Appeal stands disposed of in the above terms with no order as to costs. The Statutory amount deposited by the Appellants shall stand transferred to the Consumer Welfare Fund.