

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**CONSUMER CASE NO. 15 OF 2010**

1. KAILASH TOWER CO-OP HOUSING SOCIETY LTD.

Kailash Tower Building, Adjacent to Hiranandani Gardens,  
Powai

MUMBAI - 400 072

.....Complainant(s)

Versus

1. M/S. JAYCEE HOMES & HOTELS LTD. & ORS.

Bhagtani Cottage, Panchratna, Off Yari Road, Versova, Andheri  
(West)

MUMBAI - 400 061

2. LAXMAN BHAGTANI

Director, Jaycee Homes & Hotels Ltd., Panchratna, Off Yari  
Road, Versova

MUMBAI - 400 061

3. T.N. SHALDHAR

Architect, 6, Dhanashree, Nanda Patkar Road, Vile Parle (East)

MUMBAI - 400 057

4. T.N. SHALDHAR

Architect, 6, Dhanashree, Nanda Patkar Road, Vile Parle (East)

MUMBAI - 400 057

5. M/S. SHIVOM REALTORS PVT. LTD.

SHOP NO. 3 & 4, SHANTIVAN, OBERAI COMPLEX, NEAR  
LAXMI INDUSTRIAL ESTATE,

ANDHERI (WEST),

MUMBAI - 400 053.

6. -

- .....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING  
MEMBER**

**HON'BLE BHARATKUMAR PANDYA, MEMBER**

FOR THE COMPLAINANT : MR. S.K. SHARMA, ADVOCATE  
MR. NIHANT PANICKER, ADVOCATE

FOR THE OPP. PARTY : MR. BHRIGU DHAMI, ADVOCATE  
MR. RITESH CHOPRA, ADVOCATE FOR OP-1

**Dated : 10 June 2024**

**ORDER**

1. Heard counsel for the parties.
2. Kailash Tower Co-op. Housing Society Ltd. has filed the above complaint for the following reliefs:

- a) This Hon'ble Commission be pleased to hold and declare that the Opposite Parties are guilty of deficiency of service and unfair trade practice;
- b) This Hon'ble Commission be pleased to direct the Opposite Parties to remove the outer plaster of the Building Kailash Tower CHS Ltd. and to re-plaster the outer walls of the building with water proofing as per the norms of building constructions at their own cost and expenses in order to arrest the leakage and seepage in the flats of the members of the Opposite Party;
- c) This Hon'ble Commission be pleased to, pending the hearing of this matter, the complainant should be allowed to get the necessary & urgent repair of the External Plaster & compound tiling works at the cost of opposite parties subject to the final verdict of this honourable Commission.
- d) This Hon'ble Commission be pleased to pass an order directing the Opposite Party No. 1 to the compensation of Rs.1,51,90,000/- more particularly set out at Exhibit "E" to the Complaint for the delayed possession at the rate of Rs.20,000/- per month for 2BHK & Rs. 25,000/- per month for 3BHK flats.
- e) This Hon'ble Commission be pleased to pass an order directing the Opposite Party No. 1 and 2 to pay the compensation of Rs. 7,57,44,000/- being the price at market rate at the rate for Rs. 9,000/- per sq. ft. for the deficit area of 8416 sq. ft. as per the Exhibit "Z" 10 the Complaint.
- f) This Hon'ble Commission be pleased to pass an order directing the Opposite Party No. 1 and 2 to give the account of Rs.64,30,716/- collected towards 24 months advance maintenance collected by the members of the complainant and pay the balance amount held by them with interest @24% from the date of handing over to the complainant i.e. 01 Nov. 2007.
- g) This Hon'ble Commission be pleased to direct the Opposite Party No. 1 and 2 to execute Conveyance of Sub Plot No. 1 (Part) Survey No. 11 (Part) admeasuring 1750 sq. meters and Sub Plot No. 12 (Part) Survey No. 11 (Part) admeasuring 2075 sq. meters of Village Chandivali, Taluka Kurla, Mumbai Suburban District in favour of Complainant Kailash Tower CHS Ltd., Chandivali, Mumbai-400 072.
- h) This Hon'ble Commission be pleased sporting de Opposite Party No. 1 and 2 to pay the damages due to leakage & seepage towards furniture & fixtures, paintings & interiors @ Rs.50000/- per flat to 82 flat owners amounting to Rs.41,00,000/- the members of the Complaint.
- i) This Hon'ble Commission be pleased to pass an order directing the Opposite Party No. 1 and 2 to pay compensation for causing mental agony and harassment due to leakage to the members of the Complaint amounting to Rs.41,00,000/- and for delayed possession Rs.41,00,000/-;
- j) This Hon'ble Commission be pleased to pass an order directing the Opposite party No. 1 and 2 to pay the sum of Rs.30,14,786/- being amount of property tax paid by the flat purchasers/members of the society together with interest of 21% per annum;

k) Pending the hearing and final disposal of the complaint, this Hon'ble Commission be pleased to direct the Opposite Parties to remove outer plaster of the Building Kailash Tower CHS Ltd. and to re-plaster the outer wall with water proofing as per building contortions norms;

l) Allow the present complaint with Costs in favour of the complainant.

3. The complainant stated that M/s Jaycee Homes & Hotels Ltd., opposite party no.1 was the developer. The opposite party started construction of Kailash Tower consisting of 82 flats on plot of land bearing Sub Plot no.11 (Part), Survey No.11 (Part) of Village Chandivali, Taluka Kurla, Mumbai Suburban District Powai in the year 2002. On coming to know about the aforesaid project, various home buyers entered into an agreement for sale of their respective flats in Kailash Tower during the year 2001 to 2005. However, when the first set of home buyers started residing in their flats in June 2005, during the first monsoon season, they noticed that there was severe leakage from their flats from the outer walls of the building. The flat purchasers pointed out the leakage to opposite party no.1&2. Thereafter, they also gave a detailed report on 03.07.2005 but the opposite parties have not taken any care to remove the deficiency in construction. The complainant society was formed and registered on 23.07.2007. Thereafter, the complainant, vide letter dated 12.10.2007, addressed to the opposite party, requested to provide various documents mentioned in Maharashtra Flat Ownership Act, 1963 but neither the construction defect has been removed nor the required documents were supplied. Opposite party no.1 used to put blame upon the contractor Mr. Gurdail Singh Raina, purchaser of flat no.1204. Even after formation of the society, the complainant used to receive the complaint from the flat owners in respect of the deficiency in construction of the building. When the opposite party has not taken steps, then this complaint was filed on 19.01.2010.

4. The main argument of the counsel for the opposite party is that according to the list as supplied by the complainant as Annexure-C to the complaint, the date of Sale Deed and the date of occupation has been mentioned in this list which shows that all the flat owners have taken possession in the year 2005 itself. At the most, the opposite party obtained the occupation certificate on 01.07.2005. Therefore, the possession which was handed over prior to issue of the occupation certificate, will be treated as on 01.07.2005 and possession handed over thereafter, will be treated as the date as mentioned in the list. The defect period liability as contained in Section 5 of the Maharashtra Ownership of Flats Act is for three years therefore, this period expired in the year 2008. So far as the delay compensation and other compensation claimed on behalf of the flat owners are concerned, for that two years' limitation as provided under Section 24A of the Consumer Protection Act, 1986 will apply and that period has also expired. Therefore, the various reliefs claimed in the complaint have become time barred. He relied upon a judgment of this Commission in **CC/935/2016 Saraswati Durgaprasad Bhadouria & Ors. Vs. Sea Princess Reality & Ors.** decided on 03.03.2023 in which this Commission found that Section 9 of the Limitation Act provides that where once time has begun to run, no subsequent disability or inability to institute a suit or make an application, stops it. This Commission, further relied upon the judgment of the Supreme Court in **Vidya Drolia Vs. Durga Trading Company (2021) 2 SCC 338** and **Secunderabad Cantonment Board Vs. B. Rama (2021) 5 SCC 705** and held that making successive representations will not extend the limitation. In light of the aforesaid principle of law, the limitation for compensation will start to run from the date of possession which can at

the most be extended upto the delivery of issue of occupation certificate and limitation of defect liability will also be run when the defect was noticed for the first time in June 2005. Therefore, the various reliefs claimed in the complaint have become time barred.

5. So far as the relief for direction to the opposite party for execution of the Conveyance Deed in favour of the complainant in Kailash Tower is concerned, it is mandatory requirement under Section 11 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963. The opposite party no.1, in its written reply, has stated that opposite party no.1 was always ready and willing to execute the Conveyance Deed. However, the complainant society has not come forward with the registered agreement of its 82 members and a draft of the Conveyance Deed. Therefore, the Conveyance Deed could not be executed. Section 11 of the Act, does not provide for handing over the registered agreements of the flat buyers. However, for the convenience of the opposite party, the complainant shall obtain a photostate copy of the registered agreement and in case of any resale, the documents related to resale also be supplied to the opposite party no.1 within one month. The opposite party no.1 shall prepare a draft of the Conveyance Deed and get approval of the society and after the approval of the draft Conveyance Deed, execute the same and get it registered. The exercise for Conveyance Deed will be completed within four months from today.

ORDER

With the aforesaid observation, the complaint is partly allowed.

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**RAM SURAT RAM MAURYA**  
**PRESIDING MEMBER**

.....  
**BHARATKUMAR PANDYA**  
**MEMBER**