

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 1777 OF 2017**

(Against the Order dated 10/01/2017 in Complaint No. 32/2010 of the State Commission Kerala)

1. M/S. MAYA REALTORS PVT. LTD.

THROUGH ITS REPRESENTED BY DIRECTOR, SRI.  
RAMAKRISHNAN. S/O. APPUNNI MENON, TC-28/199,  
MAHALAKHMY, GREEN PARK.

THRISSUR.

KERALA-680022

.....Appellant(s)

Versus

1. T.P. GHOSH & 7 ORS.

REPRESENTED BY POA HOLDER-T.P. KANAKAN,  
THINNAKAKATH HOUSE, THRIPUNITHURA.

COCHIN

KERALA-682301

.....Respondent(s)

2. SMT. P. MEENAKSHY.

W/O. LATE. VETTEKKAT MADHAVAN NAIR.  
MAHALAKSHMY, PATTURAICKAL, THIRUVAMBADY  
P.O.

THRISSUR

KERALA-680022

3. SMT. M. MAYA.

D/O. LATE VATTEKKAT MADHAVAN NAIR,  
MAHALAKSHMY, PATTURAICKAL, THIRUVAMBADY  
P.O..

THRISSUR.

KERALA-680022

4. SMT. M. MADHAVI.

D/O. LATE VATTEKKAT MADHAVAN NAIR,  
MAHALAKSHMY, PATTURAICKAL, THIRUVAMBADY  
P.O.

THRISSUR.

KERALA-680022

5. SMT. M. MALINI.

D/O. LATE VATTEKKAT MADHAVAN NAIR,  
MAHALAKSHMY, PATTURAICKAL, THIRUVAMBADY  
P.O..

THRISSUR

KERALA-680022

6. SRI. SATISH MENON.

S/O. KIZHEPAT KRISHNAN UNNI MENON, ESSENTIAL  
CONSTRUELL INDIA PVT. LTD. POONKUNNAM P.O.

THRISSUR.

KERALA-680022

7. SRI.P. BHAVADASAN.

S/O. K.P. KESAVAN NAIR. H.NO.3/61, PADIKKA  
VEETIL,VARAVIIR P.O., WADAKKANCHERY.

THRISSUR.

KERALA-680022

8. SRI. RAMAKRISHNAN.

S/O. APPUNNI MENON. T C 28/199, MAHLAKSHMY,  
GREEN PARK,THIRUVAMBADY PO.

THRISSUR

KERALA-680022

**BEFORE:**

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING  
MEMBER**

FOR THE APPELLANT :

FOR THE APPELLANT : MR. ADITH MENON, MR. ADITYA  
VERMA

PROXY COUNSELS

FOR THE RESPONDENT :

FOR THE RESPONDENTS: MR. SHAIJAN C. GEORGE,  
ADVOCATE FOR R-1

MR. NISHAD L.S., ADVOCATE FOR R-2 TO R-5 AND R-7

NONE APPEARED FOR R-6

**Dated : 14 June 2024**

**ORDER**

1. This First Appeal is filed under Section 19 of the Consumer Protection Act, 1986 ("the Act") against the Order dated 10.01.2017 passed by the Kerala State Consumer Disputes Redressal Commission ('the State Commission'), in CC No. 32 of 2010, wherein the Complaint by the Complainant (Respondent No. 1) was partly allowed.
2. There was a delay of 45 days in filing the present Appeal. For the reasons stated in the application for condonation of delay and in the interest of justice, the same is condoned.
3. For ease of reference, the parties in the current appeal are identified as per the complaint filed before the State Commission. T.P. Ghosh Thinnakakath, represented by his attorney-in-fact T.P. Kanan Thinnakakath, is denoted as the Complainant (Respondent No. 1). M/s. Maya Realtors Pvt. Ltd., represented by its Director Sri Ramakrishnan, is denoted as OP-1 (Petitioner herein), while it's other owners/directors are identified as OP-2 to OP-8 (Respondents No. 2 to 8 herein).
4. Brief facts of the case, as per the Complainant, are that he was a senior consultant at IBM residing in the USA, booked a flat in the project "Maya Heights" by the Opposite Parties. An agreement was entered into between the parties on 05.01.2006, wherein OP-1 agreed to construct the flat and hand over possession to him. Also, the sale deed for 1/64 undivided share of the land was registered in the Complainant's favour under sale deed No. 7167/2005 dated 28.10.2005. The total sale consideration was Rs.15,81,650/-, which he fully paid by 26.03.2007. However, upon returning to India on 03.09.2009, he discovered that while the construction of the building was complete, a stranger named Smt. Bhavani Amma had been inducted into the flat.

5. Consequently, the Complainant filed a criminal complaint, which was referred to as a civil dispute. The Complainant then filed OS 1182 of 2009 before the Sub Court, Thrissur, seeking the eviction of Smt. Bhavani Amma, which is currently pending. In this suit, the OPs claimed they had given possession of the flat to the Complainant, which he disputed. Moreover, the OPs never informed the Complainant about the completion of the flat's construction and never handed over the keys, demonstrating a clear deficiency in service. Thus, the Complainant, being aggrieved, filed a Consumer Complaint No. 32 of 2010 before the State Commission, seeking compensation of Rs. 1 Crore and costs.

6. Upon receiving notice, OP-1 M/s. Maya Realtors Private Ltd., represented by its Director (OP-2), responded along with OP-2 to OP-8, who are its Directors. OP-5 and OP-6 remained absent. In their written version filed before the State Commission, OP-1,2,3,7 & 8 contended that the flat's construction was completed and handed over to him in September 2007. The allegation of inducing Bhavani Amma was false. According to them, after handing over possession, the Complainant conducted housewarming and subsequently leased the flat to Bhavani Amma. Therefore, they argued that the complaint should be dismissed.

7. The Learned State Commission, vide order dated 10.01.2017 partly allowed the complaint with the following reasons and findings:-

***“9. On going through the evidence adduced by both parties we are of the view that opposite parties instead of handing over the apartment to the complainant induced the said Bhavani Amma into the same. No document is produced by the contesting opposite parties to show that they have intimated the complainant regarding the completion of the construction of the apartment. Ext.A4 sale deed is only with respect to the 1/64 undivided share of the land. It was executed on October 25,2005. But the agreement Ext.A3 is executed on January 5, 2006. Therefore, the case of the contesting opposite parties that the apartment was handed over as per Ext. A4 sale deed appears to be not true.***

***10. That apart, it is clearly stipulated in Ext. A3 Agreement that first opposite party will construct the apartment and had over the same to the complaint. Except producing Ext. B1 to B3 opposite parties did not adduce any evidence to prove that they have actually handed over the key of apartment to the complainant. Ext. B1 to B3 are only copies of written statements filed by the parties in O.S1182/2019 of sub court Thrissur which do not help the opposite parties to prove their case.***

***11. Further, even now in the occupancy register kept in the Local Authority of Thrissur, Ext. A10 the names of opposite parties 2,3 and 5 are shown as evidenced by Ex.A10, the certified copy of occupancy register as on 31/03/2010. The complainant has also filed a civil suit as OS 1182/2019 before sub court, Thrissur for injunction and***

***recovery of possession of the apartment in question on the strength of his title based on the sale deed and agreement Ext. A8 is the certified copy of plaint and Ext. A9 is the certified copy of written statement in that case. Ext. B3 is the certified copy of written statement filed by the sixth defendant in that case who is Bhavani Amma where she had stated she is a relative of sixth opposite party. It is evident from all these that opposite parties instead of handing over the possession of the apartment to the complainant inducted Bhavani Amma in the apartment which amounts to clear deficiency in service on the part of opposite parties.***

***12. The complainant claimed a compensation of Rs.1 Crore. Due to the unfair acts of the opposite parties complainant lost possession of the apartment and he has to file a civil suit to recovery. Taking into account all these facts and in the nature and circumstances of the case we feel that compensation of Rs.10,00,000/- (Rupees Ten Lakhs Only) would be reasonable.***

***In the result the complaint is allowed in part. The opposite parties are directed to pay a compensation of Rs. 10,00,000/- to, the complainant. He is entitled to interest at the rate of 9% per annum from the date of complaint till realization. Complainant is entitled to cost of Rs.5,000/- in this complaint.”***

8. Being aggrieved by the impugned order dated 10.01.2017, the OP-1/ Appellant i.e. M/s. Maya Realtors Pvt. Ltd., through its director Sri Ramakrishnan filed this present Appeal No. 1777 of 2017 seeking:

***“i) Allow the present First Appeal and set aside the judgment and order dated 10.01.2017 passed by the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram in Complaint Case No.32 of 2010; and***

***ii) Pass any other order or orders as this Hon’ble Court may deem fit in the facts and circumstances of the case.***

9. In the Appeal, the Appellant/OP-1 raised the following key issues:-

- a. The State Commission disregarded the judgment of Trial Court in OS No. 1182/2009 as per which it was ready and shown during the CC proceedings. The Trial Court allowed the suit of Respondent No.1 seeking declaration, recovery of possession and damages and affirmed his rightful ownership of the property with valid title and that the Appellant acknowledged the same in their reply.
- b. The State Commission failed to consider that the said Bhavani Amma was a necessary party. Thus, crucial evidence could not be obtained. She died on 25.06.2013. However,

in OS No. 1182/ 2009. She paid consideration for the flat and stayed as owner. She implicated the plaintiff in the fraud and he was aware of the facts.

- c. The State Commission imposed a hefty compensation of Rs. 10,00,000/- based on doubts, inferences, and assumptions, which is against legal principles and lacks sufficient evidence, warranting the entire judgment's reversal.
- d. Respondent No.1 was represented by Power of Attorney (POA) holder Sri TP Kananan. As per Hon'ble Supreme Court in (2005) 2 SCC 217, the POA holder can only depose for acts performed in pursuance of the POA and not for acts done by the principal. The POA is dated 02.07.2009, while the sale deed was executed on 29.10.2005. During deposition, the POA holder provided detailed evidence on acts/ deeds of Respondent No.1, exceeding his role.

10. In response to the notice on the memo of Appeal, the Respondent No.1/ Complainant appeared and filed written submissions. On the other hand, Respondent No. 6 did not appear on several dates and was placed ex-parte vide order dated 16.02.2024. Respondents, No. 2 to 5 and Respondents No. 7 to 8, filed their combined written arguments.

11. The learned counsel for the Appellant/OP No. 1 reiterated the facts, grounds of appeal and emphasized that the Trial Court had already rendered a judgment on the same subject matter in civil suit O.S No. 1182/2009, which conflicted with the State Commission's order. The Trial Court had resolved issues regarding the declaration of title and recovery of possession concerning the residential flat in question, granting relief in favour of Respondent No. 1. Therefore, it is contended that the State Commission completely disregarded the Trial Court's judgment in suit O.S 1182/2009, despite being presented before it. It is argued that there is no violation of the Consumer Protection Act in this matter, and no evidence has been presented to establish the ingredients of deficiency of service.

12. The learned counsel for Respondent No. 1/Complainant reiterated the facts of the case argued in support of the order of the learned State Commission. He asserted that, as a consumer under the Act, he is entitled to compensation for the deficiency of service on the part of the entities who promised the construction of the Flat in the Apartment 'Maya Heights' upon payment of full consideration and within the stipulated time, yet failed to intimate the completion of the flat to Respondent No. 1 and inducted a third-party stranger into the Flat, thereby depriving the consumer of their rights. He asserted that the induction of a stranger into the Flat by the Appellant does not absolve them from liability towards Respondent No. 1 as a consumer. He relied on the judgments viz *Imperia Structures Ltd. vs. Anil Patni (2020) 10 SCC 783* and *Experion Developers Pvt Ltd vs. Sushma Ashok Shiroor (2022) SC OnLine SC 416*, wherein the right of the consumer to seek additional remedies under the Act was upheld.

13. The Learned Counsel for Respondent No. 2, 3, 4, 5, and 7 has echoed the grounds and arguments presented by the Appellant.

14. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned Counsels for both the Parties.
15. The primary issue to be determined is whether the Appellant M/s. Maya Realtors Pvt. Ltd fulfilled its obligations under the agreement with the Complainant (Respondent No.1)? Was there a breach of agreement in the form of inducting a third party into the said flat, without his consent? What is its implication on the Trial Court's judgment in suit O.S No. 1182/2009 on the order of the learned State Commission?
16. It is an established fact that the Complainant had entered into an agreement with M/s. Maya Realtors Pvt. Ltd. (OP-1) on 05.01.2006, for purchase of a flat in the 'Maya Heights' project. The sale deed for a 1/64 undivided share of the land was registered in his favour on 28.10.2005. The total sale consideration was Rs.15,81,650/-, which the Complainant paid in full by 26.03.2007. Upon his return to India on 03.09.2009, it was discovered that a third party, Smt. Bhavani Amma, was inducted in the flat, despite the Complainant's rightful ownership. He filed a criminal complaint, which was referred to as a civil dispute, and he subsequently filed a civil suit (O.S No. 1182/2009) before the Sub Court, Thrissur, seeking eviction of Smt. Bhavani Amma and recovery of possession of the flat. The Trial Court passed a judgment in his favour, affirming his ownership and right to possession of the flat. The Complainant filed Consumer Complaint No. 32 of 2010 before the learned State Commission, seeking compensation for the alleged deficiency of service by the Appellant (OP-1) in failing to hand over possession of the flat and inducting a third party into the property.
17. This is established that the Flat in question was not handed over to the Complainant on completion. It is also revealed that the third party Smt. Bhavani Amma (now deceased), a relative of Respondent No. 6 was inducted the Flat, without the consent of the Complainant. It was on account of deficiency in service on the part of OPs, the Complainant had to file the above mentioned Civil Suit No. 118 of 2009 for claiming eviction of the said Smt. Bhavani Amma, assert his ownership and now seek compensation. The Appellants failed to bring anything substantial which will warrant interference with the detailed and well-reasoned order passed by the learned State Commission vide order dated 10.01.2017 in CC No. 32 of 2010.
18. In view of the discussion above, I am of the considered view that the Order of the State Commission does not suffer from any illegality or impropriety. The First Appeal No. 1777 of 2017 is, therefore, dismissed.
19. Considering the facts and circumstances of the case, there shall be no orders as to costs.
20. All pending Applications, if any, also stand disposed of accordingly.
21. The Registry is directed to release the Statutory Deposit amount, if any due, in favour of the Appellant After due compliance of the order of the learned State Commission.

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**AVM J. RAJENDRA, AVSM VSM (Retd.)**

# **PRESIDING MEMBER**