

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 521 OF 2017

(Against the Order dated 04/07/2016 in Complaint No. 139/2014 of the State Commission
Maharashtra)

1. SHREE VINAYAK CO-OP HSG. SOCIETY LTD.

Through its Secretary, A Co-Operative Housing Society Duly
Registered Under the Provisions of Maharashtra Co-Operative
Societies Act, 1960, Having its Registered office at Building
No.11, L.T.Nagar,
ROAD NO.1,M.G.ROAD,GOREGAON (W), MUMBAI-400
062,
MAHARASHTRA

.....Appellant(s)

Versus

1. M/S. KARWA DEVELOPERS & 3 ORS.

Through its Partners, A Partnership Firm registered under the
Provisions of Indian Partnership Act,1932, Having its Place of
Address at 303, Unique Tower, Behind Patel Petrol Pump,
Off.S.V. Road,
GOREGAON (W), MUMBAI-400 062,
MAHARASHTRA

2. BANKATLAL B. KARWA

Partner of M/s Karwa Developers, Having its Office at 303,
Unique Tower Behind Petrol Pump, Off.S.V. Goregaon (West),
MUMBAI-400 062,
MAHARASHTRA

3. BANKATLAL B. KARWA

Partner of M/s Karwa Developers, Having its Office at 303,
Unique Tower Behind Petrol Pump, Off.S.V. Goregaon (West),
MUMBAI-400 062,
MAHARASHTRA

4. SURESH B. KARWA

Partner of M/s Karwa Developers, Having its Office at 303,
Unique Tower Behind Petrol Pump, Off.S.V. Goregaon (West),
MUMBAI-400 062,
MAHARASHTRA

5. VINOD B. KARWA

Partner of M/s Karwa Developers, Having its Office at 303,
Unique Tower Behind Petrol Pump, Off.S.V. Goregaon (West),
MUMBAI-400 062,
MAHARASHTRA

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE APPELLANT :

Dated : 31 May 2024

ORDER

BEFORE

HON'BLE MR SUBHASH CHANDRA, PRESIDING MEMBER

For the Appellant Ms Anju Thomas, Advocate and Ripul Swati
Advocate

For the Respondent Mr S B Prabhavalkar and Mr Nilesh Parte,
Advocates

ORDER

1. The present first appeal has been filed against the judgment dated 04.07.2016 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai (in short, 'the State Commission') in Complaint no. 139 of 2014 allowing the complaint and directing the respondent nos.1 to 4 to pay an amount of Rs.5.00 lakh to the appellant for delay in handing over the possession failing which it shall carry interest @ 9% per annum till its realisation. Respondent nos.1 to 4 are shall pay cost of Rs.30,000/- to the complainant/ society.

2. The brief facts of the case are that the appellant Shree Vinayak Co-operative Housing Society Ltd., was a Cooperative Housing Society Ltd., registered under the Maharashtra Co-operative Societies Act, 1960. The appellant society owned a plot of land at Borivali on which a building "Shree Vinayak" was constructed. The said building consists of 14 flats. The respondents herein was a partnership firm registered under the Indian Partnership Act, 1932 and is in the business of real estate development including developing residential and commercial projects. Respondents 2 to 4 are the partners of respondent no.1. Development Agreement was signed between the appellant society and the respondent no.1 on 1st August 2009 vide which the respondent Developer was to demolish the existing building on the property and redevelop the same by constructing stlit, 7 upper floors along with amenities as described in the 3rd Schedule. On redevelopment of the land, the respondents were to hand over 13 flats to the existing members. On 9th June 2010, commencement certificate was issued and the respondents started to develop the land. On 18th April 2012, the respondents failed to carry out the final measurement of the flats at the time of getting the occupation certificate, despite several requests. The appellant society therefore, appointed an

independent, Architect Vertex Designs, who took the final measurements of three sample flats on the 3rd floor and pointed out shortfall in measurements in all the three flats. Report of the architect dated 20th April 2012 specifying shortfalls in the area developed by the respondents are in contravention to the development agreement. Although, the occupation certificate was received on 1st December 2012, on 24th April 2012, the actual delivery of the redeveloped flats were given to the appellant society after a delay of five months from the scheduled delivery. Water taxes for June to December 2012, were paid by the then Managing Committee of the appellant society even though the respondents were supposed to pay the same to Bombay Municipal Corporation (BMC).

4. On 30th March 2013 the appellant society preferred a complaint before the State Commission, being complaint no. 139 of 2014. Counsel for the respondents sent letters dated 03.05.2013 and 06.05.2013 to the counsel for the appellant alleging that appellant had made all vague allegations against the respondents. On 4th July 2016, the State Commission partly allowed the complaint on contest with the following directions:

- a. Opponent nos.1 to 4 are directed to pay amount of Rs.5 lakhs to the complainant society as per clause of the agreement for delay in handing over possession within a period of one month from the date of order, failing which the amount will carry interest @ 9% per annum till its realisation;
- b. Rest of the prayers of the complainant are rejected for want of evidence;
- c. Opponent nos.1 to 4 to bear their own costs and shall pay cost of Rs.30,000/- to the complainant/ society;
- d. Complaint as against opponent nos. 5 to 7 is hereby dismissed.

5. The appellant has filed the present appeal with this Commission with praying to:

- i. Allow the appeal and set aside/quash the impugned judgment and order dated 04.07.2016 passed by the State Commission, Maharashtra in Complaint case no. Cc/14/139 to the extent it dismisses all claims/ reliefs sought for by the appellant society;
- ii. In the alternative, remand the matter back to the State Commission for *de-novo* hearing of the matter;
- iii. Award cost of the appeal in favour of appellants; and
- iv. Pass such further order or orders, which the Commission may deem fit in the circumstances of the case.

6. I have heard the learned counsel for the parties and have carefully considered the material on record.

7. Learned counsel for the appellant stated that the flats were delivered on 24.04.2012 after a delay of five months, and that several deficiencies were pointed out by the appellant, such as property tax amounting to Rs.14,25,000/- not being paid by the respondent developer, municipal tax of Rs.3,78,000/- not being paid to BMC, maintenance charges of Rs.1,18,340/- and rent due of Rs.12,60,000/- not being paid. It is also alleged that carpet area was not as promised in the Development Agreement which was valued at Rs.53,69,000/-. Learned counsel further submitted that the respondents failed to fully honour their contractual

obligations and rectify the defects. He further submitted that the report of the Architect Vertex Design did not specify the shortage of area and that the architect has not filed the affidavit in support of their report. Further, the architect had inspected only three sample flats. The report given by Architect Vertex Design was only with respect to the measurement of the flats and the report does not provide the exact shortage of the carpet area. It is further stated that as per Clause 19 (a) of the Development Agreement, members of the society were liable to be compensated for shortfall in the carpet area of their respective allotted flat. It is contended that the State Commission failed to adjudicate upon the issues of Municipal Tax and Property Tax and the reason for rejection of appellants contentions before it is that the appellant has failed to provide the year wise break up with respect to the respective taxes. Appellant further submitted that the subject flats were demolished in June 2010 and occupation certificate was received only on 1st December 2012. The State Commission committed a grave error in not discussing the claim of the appellant society regarding non-payment of maintenance charges by respondents. The Development Agreement clearly records that the maintenance charges were to be paid by the Respondent. According to the appellant, the respondent developer has also failed to pay the members of the society the monthly rent for alternate accommodation. Learned counsel for the appellant further stated that the respondents have not entered into a separate agreement till date with the member of flat no. 403 of the appellant society, even after grant of possession and obtaining the occupancy certificate. The State Commission had also rejected the claim of the appellant with regard to water taxes, lifts, stlit car parking etc. Learned counsel for the appellant further submits that there are several amenities which were not provided by the respondent developer including teakwood finish doors in the houses. She further submits that the respondent has failed to provide sliding windows, decorative MS gate, water pumps and loft facilities. Hence, the learned counsel for the appellant submits that this Commission may allow the prayers of the appellant society.

8. *Per contra* the learned counsel for the respondent submitted that the complaint has been partially allowed and the respondent was directed to pay compensation of Rs.5,00,000/- towards delay in delivery of possession of permanent alternate accommodation and Rs.30,000/- towards costs. Learned counsel for the respondent submits that the respondent had also filed Appeal No. 980 of 2016 against the order dated 04.07.2016 and the said appeal was dismissed by this Commission vide order dated 03.03.2017 at the stage of admission hearing without considering the legal point of pecuniary jurisdiction. Learned counsel for the respondent submits that being aggrieved of the order of this Commission, the respondents herein filed Special Leave Petition (SLP) (C) 17015 of 2017 before the Hon'ble Supreme Court. The said SLP was withdrawn on 21.07.2017 during admission hearing as the court was of the opinion that the respondent should have filed a Review Petition before this Commission for which liberty was granted.

9. Learned counsel for the respondent submitted that respondents filed a Review Application no. 154 of 2017 which was dismissed on 13.02.2019 without considering the point of pecuniary jurisdiction raised by the respondents. In the light of aforementioned legal position, the respondents are not raising the issue of pecuniary jurisdiction which they had raised before the State Commission, National Commission and the Hon'ble Supreme Court.

10. Learned counsel for the respondent has relied upon the judgment of the Hon'ble Supreme Court in Civil Appeal no. 1118 of 2016 ***Sobha Hibiscus Condominium vs Managing Director, M/s Sobha Developers Ltd., and Anr.***, decided on 14.02.2020, wherein it was held that a Society formed and registered under the provisions of Maharashtra Co-operative Societies Act cannot be considered to be a voluntary organisation since the same is required to be registered under the law and that such a co-operative society does not fall within the scope and ambit of Section 12 (1) (b) of the Consumer Protection Act, 1986. Respondent further submitted that the present appeal sought enhancement of compensation for shortage of area, reimbursement of municipal taxes and property taxes, non-payment of maintenance charges of respondents, reimbursement of monthly rent for alternate accommodation, agreement not executed with one member, water taxes and maintenance charges etc. It was further submitted that there was no evidence on record to show that the said dues are payable by the respondent. Accordingly, respondent prays that the present appeal is frivolous and vexatious and deserved to be dismissed with cost.

11. From the facts of the present case and as admitted by the respondent, payment of Rs.5.00 lakh along with Rs.30,000/- already stands paid towards deficiency in shortage of carpet area, reimbursement of municipal tax, property tax and reimbursement of monthly rent for alternate accommodation, agreement not executed with one member, water tax, lift maintenance charges etc., as per the order dated 04.07.2016 of the State Commission. The respondent's case is that enhancement of the amount by the State Commission is not admissible since it had already paid the cost imposed by the State Commission. It has also taken the argument that in view of ***Sobha Hibiscus Condominium*** (Supra), a society formed and registered under the Maharashtra Cooperative Societies Act which the appellant is, cannot be considered to be a voluntary organisation and therefore, does not fall within the scope and ambit of Section 12 (1) (b) of the Consumer Protection Act, 1986. It is, therefore, contended that the appeal is not maintainable and deserves to be dismissed.

12. On the other hand, it is the appellant's contention that there is an admitted deficiency on the part of the respondents not only with regard to shortage of carpet area as per the development agreement and as per the report of the Architect Vertex Designs, but there was also deficiency on the part of the respondent who failed to pay the municipal tax and property tax amounting to Rs.3,78,000/- and Rs.14,25,020/- respectively which was the obligation of the respondent as per Clause 6 (k) of the Development Agreement. It is also contended that the State Commission has erred in not adjudicating the issues of non-payment of maintenance charges by the respondents, reimbursement towards monthly rent for alternate accommodation for the member which amounted to Rs.12,60,000/- and water tax of Rs.60,000/-. The State Commission had also dismissed the loss incurred by the appellant Society with regard to the cost incurred on the repair of lifts without considering that the appellant society had sought battery backup for the lifts.

13. From the above, it is apparent that the differences between the appellant and the respondents relate to issues which are covered under the development agreement as well as are issues of maintenance such as battery backup for the lifts. The impugned order of the State Commission is after considering all aspects and had awarded cost of Rs.5.00 lakh and Rs.30,000/-. The respondents' plea is that the Cooperative Society as it exists today does not qualify as a consumer under Section 12 (1) (b) of the Act, in terms of the judgment of the ***Sobha Hibiscus Condominium*** (Supra).

14. Be that as it may be, with regard to the claim of the appellant that the State Commission failed to adequately compensate the appellant, it is seen that the impugned order is a detailed and reasoned one. Merely because the appellant is not satisfied with the quantum of relief awarded, it cannot be argued that the order itself was incorrect. The State Commission's order has considered the submissions of both the parties and has deliberated on various aspects of the submissions presented before it.

15. For the aforesaid reasons, we do not find any reason to interfere with the same. The appeal is accordingly dismissed with no orders as to costs.

16. Pending, IA's, also stand disposed of by this order.

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**SUBHASH CHANDRA
PRESIDING MEMBER**