

**BEFORE THE GOA STATE CONSUMER DISPUTES
REDRESSAL COMMISSION,
PANAJI-GOA**

In the matter of First Appeal 49 of 2015 in Consumer
Complaint 25 of 2013.

**Before: Adv. Mrs. Varsha R. Bale, Officiating President
Adv. Ms. Rachna Anna Maria Gonsalves, Member**

Total Securities Pvt. Ltd.,
Having its registered office at,
139, Paschim Vihar, Vaishali Nagar,
Jaipur Rajasthan.Appellant-1

Total Securities Pvt. Ltd.,
Having its local office at,
Flat No. S1/2, Building B-8,
Milroc Ribandar Estate, Panaji, Goa.Appellant-2

Mr. Pankaj Madhok, Director,
s/o Surinderjit Madhok,Appellant-3

Mrs. Kirti Madhok, Director,
w/o Mr. Pankaj Madhok,Appellant-4

*both above residents of
r/o 139, Paschim Vihar, Vaishali Nagar,
Jaipur Rajasthan.*

V.

Mrs. Neo Pachisia,
d/o H.G. Pachisia,Respondent-1

and her husband,
Mr. Subhash Desai,
s/o J.S. Desai,Respondent-2

both above residents of
D-6, Serenity at Varca,
Varca Fatrde Road, Salcete, Goa.

Appellants absent.

Adv. Jonathan Costa present for Respondents-1 & 2.

DATE: 20/06/2024

JUDGMENT

[per Adv. Mrs. Varsha R. Bale, Officiating President]

1. This Appeal is directed against the Order dated 29/06/2015 passed by the District Consumer Commission, South Goa. ('The District Commission' for short) in CC No. 25/2013. The Appellants were the Opposite Parties (OPs for short) and Respondents were the Complainants in the said Complaint. Parties shall hereinafter be referred to as per their status in the said Complaint.

2. The Complainants had filed the said complaint praying therein to direct the OP's to pay to the Complainants an amount of Rs.2,07,259/- with interest @ 18% from 31st December 2011 till the date of disposal, to direct to pay Rs.2,00,000/- towards mental torture and harassment, with interest @ 18% p.a. from 31st December 2011, to provide all the necessary details and breakup of the amounts mentioned by the OPs in bills dated 15/07/2011, 31/10/2011 & 31/12/2011 of Villa Nos. C-11, C-12 & D-6 each, to form Co-op. Housing Society, to change the name/addressee of the electricity meters from that of OPs to the Complainants with NOC.

3. Case of the Complainants in short is as follows:

That the Complainants purchased 3 residential units from OP-1 for their personal use and enjoyment, namely 2 villas and 1 flat in the residential complex known as "Serenity at Varca" vide Deed of Sale dated 06/04/2011

& 07/06/2010 respectively. At the time of execution of Sale Deeds, they were informed that they would have to deposit an amount of Rs.1,00,000/- each for the said villa bearing villa No. C-11, Villa No. C-12 & Flat No. D-6 with OP-1 for the purpose of contribution towards necessary monthly expenses towards electricity charges of the staircase block, including the replacement of the fused bulbs and other fixtures, water charges, lift, generator and other common expenses towards maintenance. The Complainants thus proceeded to deposit a total amount of Rs.3,00,000/- with OP for said 2 Villas & 1 Flat. But on 06/08/2011, the Complainants were shocked to receive from OP-1, 3 bills each, dated 15/07/2011 in respect of said 2 Villas & 1 Flat calling upon the Complainants to pay certain dues for provisions of services enlisted therein. The said bills were arbitrary amounts mentioned without any details thereof, without any support of invoices, bills, expenditure actually incurred by the OP-1 or any other documentary evidence to the same. The OP-1 has charged the Complainants in the said 3 bills dated 15/07/2011 an amount of Rs.8,217/- for the alleged internal upkeep of the flat/villas including material on a bi-weekly basis even though the Complainants were not residing in the said flat/villas since the time of taking possession and never requested for such services. OP-1 also charged them House Tax for said villas & flat. They asked about the said bills to OP-1 to which OP-1 informed them that he would provide a proper detailed breakup of all expenditures allegedly incurred by him. But no such information was ever received from them. Again on 23/11/2011, OP-1 forwarded 3 more bills to the Complainants. The Complainants addressed email to OP-1 asking for the proper breakup and details of

payments. For which OP-4, Director of OP-1 replied that they would not be able to give any such details of payment. The Complainants personally came down to Goa to enquire about the said payments, but OP-3 refused to entertain the queries and also to give details about bills. The Complainants also requested the OPs-3 & 4 to change the name of the electricity meter from Total Securities Pvt. Ltd. to those of the Complainants. But their request was ignored. Thereafter, the Complainants issued legal notice dated 31/03/2012 to the OPs to provide all the necessary details and breakup of the amounts mentioned by the OPs. But the OPs failed to reply to the said notice. Again on 06/12/2012 & 26/03/2013 legal notices were issued. But the OPs failed to reply the same. Hence the Complaint.

4. The Complainants relied upon Two Deeds of Sale dated 06/04/2011; & Deed of Sale dated 07/06/2010; Bills dated 15/07/2011 in respect of Villa No. C-11, C-12 & Flat No. D-6, email dated 25/11/2011 addressed by the Complainants to the OPs; Bills dated 31/10/2011 in respect of Villa No. C-11, C-12 & Flat No. D-6; email dated 29/11/2011 addressed by the Complainants to the OPs alongwith reply, Bills dated 31/12/2011, 3 legal notices alongwith A/D Cards dated 31/03/2012, 06/12/2012 & 26/03/2013.
5. The OPs filed their Written Version denying the case of the Complainants. Case of the OPs in short, is as follows:

That the amount of Rs.1,00,000/- each deposited by the Complainant is as per term of clause No. 5 of the Sale Deed and the same is binding on them. They have

correctly and in terms of clause No. 4 of the Deed of Sale issued the bills in respect of the said 3 premises which the Complainant is liable to pay. They denied that the said bills were arbitrary amounts. The OPs stated that the Complainants are only trying to wriggle their way out from the present situation as they do not intend to pay the OPs. The Complainants were not charged anything outside the scope of what was agreed and included in the Deed of Sale. The OPs further stated that the said maintenance charges are meant for the maintenance of the entire complex and the same is charged proportionately, not only to the Complainant but to all the purchasers of the said complex and for that matter, the charges are applied according to the area of the premises purchased by the purchasers including the Complainants. Therefore, it is immaterial whether the Complainants are residing in the said Flat/Villas or not, as the entire maintenance requires to be done throughout. Further, the House Tax which has been paid is the actual House Tax charged by the Village Panchayat of Varca, for which necessary receipts are issued. Also, it is the responsibility of the Complainants to pay the electricity bills for the respective premises. The OPs denied that, they in a high handed and arbitrary manner, without the consent of the Complainants, raised 3 bills dated 15/07/2011 in respect of alleged services provided by OP-1. Whatever charges are applicable are as per the terms and conditions agreed between the parties. The OPs further stated that at no point of time, the OPs have refused to give NOC for transfer of electricity meters. It is for the Complainants to get the said electricity meters transferred in their name and for which NOC from the OPs is not required. They denied that there has been

extreme deficiency in service provided to the Complainants by them.

6. The OPs relied upon various maintenance Bills, House Tax Receipts, Statement of Account, Correspondence exchanged between the OPs with the Complainants.
7. The Complainants filed their Affidavit-in-Evidence. The OPs filed the Affidavit-in-Evidence. Both the parties filed Written Arguments before the District Commission.
8. Vide the Impugned Judgments, the District Commission held that, it was imperative that the OPs on being requested by the Complainants for the breakup of the expenses as incurred by them give ought to have the proper breakup of the amounts payable. Until and unless such breakup is given the OPs are guilty of deficiency of service and the Complainants are not bound to make the payments alleged to be due unless this process is followed. The Complaint has been allowed and the OPs have been directed to return the said amount of Rs.2,07,259/- interest @ 9% within 30 days, OPs have been also directed to pay Rs.50,000/- towards mental torture and harassment, further OPs have been also directed to provide all the necessary details and breakup of the amounts; the OPs have also been directed to form Co-op. Housing Society within 60 days; and have been further directed to Co-operate with the Complainants and shall sign all the documents in respect to change in name of electric meter; the OPs have been directed to pay sum of Rs.10,000/- towards costs. The OPs are aggrieved by the Impugned Judgment and Order.

9. Records and Proceedings of the said Complaint No.25/2013 were called for, the Respondent Nos.1 & 2 filed their Written Arguments. Arguments were heard on behalf of the Respondent Nos. 1 & 2. In spite of several opportunities granted Appellant failed to appear and argue the matter. We have gone through the entire material on record.

10. That the Complainant purchased 2 bungalows and 1 flat from OP-1. As per Sale Deed, the Complainants had agreed to deposit an amount of Rs.1,00,000/- each for a flat and 2 villas with OP for the purpose of contributing towards necessary monthly expenses and other common expenses which were already paid. But thereafter the OP issued 3 bills to the Complainants in respect of the said 2 villas and 1 flat calling upon them to pay certain dues for the services provided by them. The Complainants requested them to submit the breakups for the said 3 bills dated 15/07/2011, 31/10/2011 and 31/12/2011. But the OPs failed to reply.

11. As per the OPs, the said maintenances charges are meant for maintenance of the entire complex, but failed to prove for what time period the Complainants were charged for such services. The OPs also failed to give the breakups to explain the expenses incurred by them. The OPs also failed to reply to the email sent by the Complainants. The payments demanded were without any bills, without any breakups, etc. Secondly, the bill mentioning the time period for which the OP was charging the Complainants for services to have been rendered towards the 2 bungalows and 1 flat was not given.

12. That the No Objection Certificate was also not given by the OP even after repeated requests from the Complainants, subjecting the Complainants to hardships. The OP also failed to reply to the Legal Notice sent by the Complainants. This only goes to show the negligent behaviour of the OP.

13. The District Commission rightly observed that 'the grievance raised by the Complainants, wherein they are entitled to a breakup of the expenses is totally genuine and they are entitled to know the same. They are also entitled to ascertain whether such expenses include the expenses incurred on behalf of the flat owners or of the villa owners who have been renting their built up areas for commercial purpose. The OPs cannot arbitrarily include the expenses incurred exclusively for the upkeep of the flats and villas for the purpose of renting the same out' We are also in the agreement of the observations drawn out by the District Commission in Paras 37, 38, 39 & 40 of the Judgment.

14. This clearly shows that there is indeed deficiency in service on the part of the OPs and the Complainants have indeed suffered a lot due to such negligent act of the OPs and it is often that builders take consumers for a ride and show no transparency or commitment in their actions post sale of the property being devoid of any business ethics or responsibility.

15. There is absolutely no merit in the Appeal. No interference is called for with the Impugned Judgment and Order. The Appeal deserves to be dismissed.

16. In the result, we pass the following:

ORDER

Appeal is dismissed with no Order as to costs. Office to send back the Records and Proceedings to District Consumer Commission, South, Goa.

Pronounced in Open Court.

Proceedings in the matter stands closed.

[Adv. Mrs. Varsha R. Bale]
Officiating President

[Adv. Ms. Rachna Anna Maria Gonsalves]
Member

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