

(2016) 09 NCDRC CK 0112

In the National Consumer Disputes Redressal Commission

Case No : 2450 of 2016

M/S. SUPARSHWA ENTERPRISES & ORS. APPELLANT

Vs

SUPARSHWA CO-OPERATIVE HOUSING SOCIETY LTD. & ANR. RESPONDENT

Date of Decision : 27-09-2016

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 12\(1\)](#) - Manner in which complaint shall be made.

Citation : 2016 4 CPR 22

Hon'ble Judges : Rekha Gupta, Anup K Thakur

Advocate : Jay Savla, Shilpi, Jasdeep Dhillon

Final Decision : Petition Dismissed

Judgement

1. This revision petition is against the order of Maharashtra State Consumer Disputes Redressal Commission, Mumbai (for short, "State Commission") dated 13.06.2016, was heard on 08.09.2016 and is being disposed of at the admission stage itself.

2. Respondent No.1-Suparsha Co-operative Housing Society Ltd./complainant had filed a complaint before the District Consumer Disputes Redressal Forum, South Mumbai District, Mumbai (for short, "District Forum") vide C.C. No.318 of 2016 under Section 12 (1) of the Consumer Protection Act, 1986. The gist of the complaint was that they were a Co-operative Housing Society and were the victims of unfair trade practice and deficiency in service on the part of the petitioners/OPs, who were a partnership firm engaged in the construction business, both residential and commercial. As per the respondents/complainants, the petitioners/ OPs came into possession of some tenanted land/property and under their redevelopment scheme, constructed a building with provision of 4 shops and 21 flats. The complainant society contend as final NOC and other legal formalities had been completed by Bombay Housing and Area Development Board and the Municipal Corporation of Greater Mumbai, they purchased flats in the said project and entered into duly registered agreement of sale. The OPs

allegedly, contrary to their statutory and contractual obligation, without obtaining occupancy certificate, handed over the possession of the flats to the respective purchasers in August 2003. The OPs led them to believe that they had applied for occupancy certificate and called upon them to take possession after paying balance consideration. It is therefore alleged that this was a clear deficiency of service and an instance of unfair trade practice on the part of the Ops. A further complaint is that under the Maharashtra Ownership Flat Act, 1963, and rules thereunder, a promoter is required to make an application to the Registrar for registration of the organization of persons who take flats as a co-operative society or a company as the case may be, from the date on which the minimum number of persons required to form such an organization have taken flats. The complaint is that the OPs failed in this statutory obligation and neglected to take any steps to form the co-operative society and thereafter to convey the property in favour of the society. The complainant society further submitted that their members being left with no option eventually contributed money to form the society themselves. This was done on 2.5.2005. It is further alleged that the OPs have also failed to provide basic and necessary amenities. In particular, the society has drawn attention to the fact that it has yet to be granted terrace rights. Also, the complaint is that their failure to obtain occupancy certificate means that the flat owners of the society have to bear charges of basic amenities such as water at higher rates. Along with host of other grievance in the same tenor, the complainant society sought relief from the District Forum as below:-

(a) to direct the OPs to surrender the rights of the terrace in favour of the complainant society;

(b) to direct the OPs to obtain the occupation certificate from BMC for the complainant society

(c) to direct the OPs to execute the conveyance deed in favour of the complainant society;

(d) to direct the OPs to handover upto date account of the society;

(e) to direct the OPs to refund sum of Rs.4,000/- to each flat purchasers along with 18% interest from the date of payment till realization of the same;

(f) to direct the OPs to pay compensation of Rs.4,00,000/- for loss of future income caused by not surrendering the rights of the terrace to the complainant society;

(g) to direct the OPs to pay compensation of Rs.5,00,000/- for all the harassment;

(h) to direct the OPs to pay legal charges of Rs.50,000/- to the complainant society;

3. This was contested by the OPs. In their submission before the district forum, they held the complainant to strict proof of the contentions they had put forth to prove alleged deficiency in service and unfair trade practice. According to them,

the flats were handed over to the members of the society for the limited purpose of carrying out furniture/interior work therein and this too was done on their specific request. The petitioners further contended that they are now not able to get the occupancy certificate as the renovation work etc. carried out by various flat purchasers in the guise of furniture/interior work has resulted in material alteration to the flats, which is irregular.

4. Before the District Forum while the complainants argued their case, and filed written arguments duly supported by affidavit of evidence, the OPs neither filed any affidavit of evidence nor presented any written arguments. In fact, the counsel for the petitioners sought discharge from the case before the District Forum saying that he had received no instructions and had not been able to contact the his clients, the petitioners/OPs for the last 4/5 years.

5. On the basis of written reply of the OPs and the arguments of the complainant duly supported by affidavit of evidence, the District Forum partially allowed the complaint vide order dated 27.12.2013 and directed as below:- (i) The OPs no.1 to 3 to execute conveyance deed in respect of the building of the complainant society within four months;

(ii) The OPs no.1 to 3 to obtain occupation certificate and completion certificate within six months;

(iii) The OPs no.1 to 3 to handover the accounts of the society to the complainant within three months;

(iv) The OPs no.1 to 3 directed to pay Rs.7,260/- to the flat purchasers with interest @ 9% p.a. till its payment;

(v) The OPs no.1 to 3 directed to pay Rs.25,000/- as cost to the complainant society.

6. Being aggrieved by the order of the District Forum, the petitioners filed an appeal No.A/15/1232 before the State Commission but after a considerable delay. Their Misc. Application No.MA/15/533 sought condonation of delay of 625 days. In its order, the State Commission heard counsels for the appellants as well as the respondents. They noted that the reasons mentioned by the appellants for condonation of delay did not sufficiently explain the inordinate delay of 625 days. They further noted that the Consumer Protection Act, 1986 is a speedy remedy made available for the consumers and considering this, it was not at all desirable to condone such a huge delay of 625 days, more so when it is not properly explained. In the result, vide their order dated 13.06.2016, they rejected the application for condonation of delay and consequently dismissed the appeal.

7. And so, the petitioners are now before us by way of this revision petition.

8. Learned counsel for the petitioners submitted that the petitioners' case has not been represented properly so far and the State Commission was remiss in dismissing their appeal outright on ground of inordinate delay. He argued that

the Advocate for the petitioners was allowed by the District Forum to get himself discharged and the District Forum thereafter should have issued notice to the petitioners in order that they got an opportunity to argue their case. He further argued that the petitioners only gave temporary possession to the flat purchasers on their request to carry out work limited to furniture/interior work only and that in clear breach of this understanding the flat owners exceeded this understanding and caused substantial material alteration to the building due to which the petitioners were unable to get occupation certificate.

9. The counsel for the petitioners who appeared before us on 08.09.2016 was asked as to how the District Forum was expected to contact the petitioners when their own counsel could not contact them and had failed to do so for so many years. To this, counsel for the petitioners had no satisfactory answer.

10. Coming to the facts of the case they are, we are of the view that the petitioners are in default. Firstly, they are in the business of construction and they therefore ought to be fully aware of their responsibilities, duties, obligations etc. It is simply not credible for them to take cover in the averment that they relented before the respondent society/complainants and handed over physical possession for the limited purpose of furnishing/interior work. And if they did so then they must suffer the consequences. Secondly, the manner in which the petitioners have acquitted themselves before the District Forum and the State Commission does them little credit. The fact that their own counsel declared before the District Forum that he had not been able to get any instructions from his client and then for the petitioners to now suggest through their counsel that the District Forum ought to have informed them is simply unacceptable. Incredulously, after such a happening at the District Forum, even thereafter their appeal before the State Commission was filed after an inexplicable delay of 625 days. This speaks volumes about the intent and conduct of the petitioners who seem to be quite happy to let the case roll on.

11. We are therefore persuaded that there being no errors of fact or law, either in the pronouncement of the District Forum or in the dismissal of the appeal by the State Commission, there is no reason nor any need to interfere with the order of the State Commission. Accordingly, the revision petition is dismissed and the order of the District Forum upheld. No order as to costs.