

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
MAHARASHTRA, MUMBAI

Consumer Complaint No.CC/18/513

Mr.Ritesh Kumar

C-908, Cosmos Executive Apartment

Palam Vihar, Gurugram 122 017

..... Complainant

Versus

Atlanta Ltd. (Through Managing Director)

Project-ATLANTA ENCLAVE

101, Shree Amba Shanti Chambers

Andheri Kurla Road, Opp.Hotel Leela

Andheri (East),

Mumbai 400059

.....Opponent

BEFORE: Justice A.P.Bhangale, President

Dr.S.K.Kakade, Member

PRESENT: Mr.Ritesh Kumar complainant in person

Mr.S.B.Prabhavalkar-Advocate for opponent

ORDER

Per Hon'ble Shri Justice A.P.Bhangale, President

1. Heard Mr.Ritesh Kumar-complainant in person as also learned Advocate

Mr.S.B.Prabhavalkar for the opponents.

2. Initially when this complaint was moved on the ground of urgency by the complainant in person, we had agreed for final hearing by virtual Video Conferencing but learned Advocate Mr.S.B.Prabhavalkar for the opponent objected for final hearing by Video Conferencing on the ground that the Consumer Courts' Advocates' Association (CCAA) have raised objection about non-existence of rules for virtual hearing of the matters. We had accordingly

requested the Chief Secretary of State Government of Maharashtra, Principal Secretary of Consumer Protection Department as also Principal Secretary of Law & Judiciary Department of State Government of Maharashtra to note this objection and to notify urgent rules and regulations to approve hearing of consumer complaints by Video Conferencing so as to enable the State Commission to dispose of the consumer disputes by hearing the complaints by means of Video Conferencing. After we issued direction to the State Government of Maharashtra by our order dated 19/08/2020, Learned Advocate Mr.S.B. Prabhavalkar stated that he is ready to argue the matter. We had made it clear by our order dated 19/08/2020 that in case no rules and regulations are framed by the State Government of Maharashtra i.e. in the absence of response from the State Government of Maharashtra, we shall be constrained to hear the complaint in accordance with the law as updated by Consumer Protection Act 2019 and also rules and regulations framed by the Central Government of India and Hon'ble National Commission. We accordingly waited for response from the State Government of Maharashtra. However, since there was no response, we proceeded to hear the complaint by means of virtual Video Conferencing. We also considered the written submissions filed on record by the parties and heard them by means of virtual Video Conferencing on 09/09/2020.

3. Now coming to the facts of the case, complainant is aggrieved by the acts of the opponent for not providing parking amenity to the complainant in respect of flat nos.A-803 & A-804 purchased by the complainant in 'Atlanta Enclave' building, Shilphata, Mumbra, Thane under registered document bearing no.8946

and 8947 dated 21/09/2012. The grievance of the complainant is that the parking is an essential amenity which ought to be made available to the flat owners who purchased the flats under registered document of sale. Our attention is invited to the sanctioned plan of Thane Municipal Corporation in respect of the building project constructed by opponent indicating that built-up area for Type B-1 and B-2 residential flat was 4597.95 sq.ft. for 117 tenements. The approved plan also indicated that total tenements in the project were 293 for which total parking spaces provided were 162. According to complainant the sanctioned plan was obtained by the complainant exercising his right under Right To Information Act. He alleged unfair trade practice on the part of builder and developer in the matter of non-allotment of parking spaces. He placed reliance on the judgement in the matter of *Nahalchand Laloochand Pvt. Ltd. v/s Panchali Co.Op. Housing Society Ltd.* decided by Hon'ble Supreme Court of India in Civil Appeal No.2544/10 to argue that Hon'ble Apex Court noted about malpractices in sale and transfer of flats by builders, developers and promoters and in view of the provisions of Maharashtra Ownership Flats Act 1963 (MOFA) decided that the right of promoter to transfer the parking spaces is not restricted and noted that promoter has contractual, legal and fundamental right to dispose of stilt/open parking spaces in the manner he proposes and his consumers accepts. Also observed that promoter has no right to sell any portion of the building which is not a 'flat' within the meaning of section 2(a-1) of the Act and the entire land and building has to be conveyed to the organization making it clear that promoter has no right to sell stilt parking spaces as these are

neither 'flat' nor attachment to a flat. In other words, therefore according to the complainant when he is purchaser in respect of flats in the A building therefore, he is entitled for parking space as an essential amenity in respect of two 1 BHK flats sold to the complainant being flat numbers A/803 and A/804 in Atlanta Enclave, Shilphata, Mumbra, District Thane. According to complainant, the opponent has indulged into unfair trade practice within the meaning of Section 2(1)(r) of Consumer Protection Act, 1986 by their deficiency in service in the matter of non-allotment of any parking space in favour of the complainant as also, compensation for delayed delivery of possession to the complainant which is claimed in the sum of Rs. 3 Lakhs for mental harassment and Rs 5,40,000 towards loss of rent for delayed possession. Complainant also prayed for costs in the sum of Rs 2 Lakhs as he had to travel from New Delhi to Mumbai on many occasions to prosecute this complaint.

4. Learned Advocate Mr.Prabhavalkar objected prayers on the ground that they are unjust and unreasonable and stated that possession was already handed over to the complainant in respect of flats and, therefore, he is not entitled to compensation. He also stated that there was no agreement to provide parking space under stilt area as there was no parking space under stilt area.

5. We have gone through the documents, Agreement for sale of the flat which in clause (kk) indicated the area of the flat A-803 and clause (ll) indicating that promoter had not allowed car parking space in the stilt area. Further according to Learned Advocate Mr.Prabhavalkar since the Co-operative Housing Society

is formed, it is for the Co-operative Housing Society concerned, to allot the car parking space to the flat owners in accordance with the rules framed by it. He therefore contended that complaint is not maintainable against the builder and developer as society is not impleaded in the case.

6. We have considered the submissions advanced by both the parties. In our view, opponent failed to bring on record the fact that the builder/developer/promoter transferred the property in favour of the Co-operative Housing Society so as to leave it to the society to allot the car parking spaces. In our view, it is for the builder/developer to construct the building in accordance with the sanctioned plan by Local Municipal Corporation or Municipal Council. The builder/developer ought to take care that in the building project to be constructed, sufficient number of car parking spaces ought to be created in co-relation with number of respective flats made available in the building to ensure that each of the flat owner shall at least receive one car parking space for to park his car or vehicle. In the sanctioned plan we find that number of car parking spaces were not provided so as to provide amenity of car parking to each and every flat owner or purchaser. It is under these circumstances, in our view, Co-operative Housing Society to whom the land and the building is conveyed within the meaning of Maharashtra Flat Ownership Act 1963, ought to frame necessary rules and regulations to provide each flat owner car parking space. In case, the number of flat owners are more than the number of car parking spaces available, it is for the society to frame appropriate rules so that on rotational basis and periodical basis as may be determined by the rules,

each flat owner or purchaser shall be entitled to the benefit of parking amenity while occupying the flat. In such cases, the flat owner or purchaser occupying the flat for self occupation in the building ought to be provided with car parking space which the flat owner is entitled on the basis of principle that each flat owner /purchaser shall be entitled to at least one car parking space in respect of flat in his occupation. Since the complainant argued that society was not existing nor the builder had transferred the property including land and building to the society when he filed this complaint, we must direct the opponent to provide the information to the complainant as to when the land and the building is conveyed to the Co-operative Housing Society, who is administering management of the building. The builder/developer cannot escape the obligation implied under the law to provide amenity of car parking space to each of the flat purchaser/owner as it is expected that the local sanctioning authority also ought to take permission that each of the flat owner of the building is provided with amenity of car parking space on the principle that one flat owner must get at least one car parking space. If no such permission is taken by the sanctioning local municipal authority or planning authority, the Co-operative Housing Society concerned to whom the land and the building is conveyed, ought to frame appropriate regulations to provide available car parking spaces ensuring that each of the flat owner must get at least one car parking space. In case, car parking spaces are less than the number of available flats sold, then in that case, the regulations must take care of periodical allotment of car parking by rotation or otherwise to ensure that each of the flat owner should receive the

amenity of the car parking in the car parking spaces available under the management and administration of the Co-operative Housing Society.

7. We therefore find that opponent is guilty of deficiency in service in this regard and direct that complaint ought to be partly allowed. Opponent/builder/developer shall communicate to the complainant the fact of conveying land and the building to the Co-operative Housing society concerned with date of such conveyance. In case, communication is made to the complainant as to the fact of conveyance in favour of Co-operative Housing society concerned, the complainant shall be at liberty to approach the Co-operative Housing Society concerned who shall in view of the reasons stated by us, frame appropriate rules to provide car parking space/s to the complainant. Opponent shall also inform the complainant about car parking spaces handed over to the management of the society in co-relation with the total number of flats in the building project so that complainant can follow his remedy as against the Co-operative Housing Society concerned.

For deficiency in service on the part of opponents, we direct opponent to pay sum of Rs.50,000/- towards compensation for mental and physical harassment to the complainant and costs in the sum of Rs.25,000/- which shall be payable to the complainant within a period of two months from the date of communication of this order to the opponents. In case, there is default, amount shall carry interest @ 12% p.a. until the full payment is made of the costs and compensation awarded.

Complaint is partly allowed accordingly.

Copies of the order be furnished to the parties.

Pronounced on 15thSeptember, 2020 by Video Conferencing.

[Justice A.P.Bhangale]
President

[Dr.S.K.Kakade]
Member

Ms