

A BUILDER'S FAILURE TO OBTAIN AN OCCUPATION CERTIFICATE AMOUNTS TO DEFICIENCY IN SERVICE UNDER THE CONSUMER PROTECTION ACT, 1986

INTRODUCTION:

The Apex Court in **Samruddhi Cooperative Housing Society Ltd. v/s Mumbai Mahalaxmi Construction Pvt. Ltd.**¹ observed that an obligation is cast on the builder to provide the occupancy certificate and to pay for other relevant charges till such occupancy certificate is provided. The failure of a builder to obtain an occupation certificate amounts to a deficiency in service under the Consumer Protection Act, 1986.

FACTS:

The Appellant is a cooperative housing society. The Respondent is a builder and had entered into agreements to sell flats in a building wherein the individual purchasers are members of the Appellant Society.

The members of the Appellant had booked flats with the Respondent in the year 1993 and consequently possession was granted to them in the year 1997. However, the Respondent failed to obtain an occupation certificate from the municipal authorities resulting in the members of the Appellant having to pay property tax and water charges, at rates higher than the normal charges.

On 8th July, 1998, the Appellant instituted a consumer complaint before the State Consumer Disputes Redressal Commission, Mumbai, for seeking a direction that the Respondent obtain the occupation certificate.

By an order dated 20th August, 2014, the State Consumer Disputes Redressal Commission, Mumbai, *inter alia* directed the Respondent to obtain an occupancy certificate within four months from the date of the order.

Vide a legal notice dated 28th December, 2015, addressed to the Respondent, the Appellant demanded payment of outstanding dues.

The Respondent failed to comply with the demand. The Appellant thereafter filed an application for execution of the order of the State Consumer Disputes Redressal Commission, Mumbai, dated 20th August, 2014 and filed a complaint before the National Consumer Disputes Redressal Commission *inter alia* for seeking a payment of Rs. 2,60,73,375/- for reimbursement of excess charges and taxes paid by the members of the Appellant due to deficiency in the services provided by the Respondent.

The National Consumer Disputes Redressal Commission observed that the complaint was filed for recovery of excess amounts, from the Respondent, that were paid by the Appellant to various authorities. The National Consumer Disputes Redressal Commission further observed that the Respondent was not the service provider of the services for which excess charges was levied and held that the Appellant did not fall within the definition of "consumer" as per section 2(1)(d) of the Consumer

¹ Civil Appeal No. 4000 of 2019

Protection Act, 1986 (“the Act”). The National Consumer Disputes Redressal Commission dismissed the complaint filed by the Appellant as being barred by limitation and not maintainable under the Act (“**impugned order**”).

Being aggrieved by the impugned order of the National Consumer Disputes Redressal Commission, the Appellant challenged the same before the Apex Court.

ISSUES FOR CONSIDERATION:

The main issue for consideration before the Apex Court was:

Whether the complaint filed by the Appellant was maintainable?

SUBMISSIONS ON BEHALF OF THE APPELLANT:

The Appellant *inter alia* submitted that there was a continuing cause of action, as the Respondent failed to obtain the occupancy certificate. Due to the failure of the Respondent, the members of the Appellant had to pay higher amounts towards property tax and water charges.

It was further submitted by the Appellant that under section 6 of the Maharashtra Ownership of Flats Act, 1963, (“**MOFA**”) it was the responsibility of the builder to provide the occupancy certificate to a society. The Respondent did not obtain an occupancy certificate even after twenty-four years after giving possession of the flats to the members of the Appellant.

The Appellant submitted that due to deficiency in services of the Respondent, in not obtaining the occupancy certificate, the members of the Appellant had to make excess payments and therefore, the Appellant was a consumer within the meaning of the Act.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

The Respondent submitted that it had completed construction of the building in the year 1997 and had applied for an occupancy certificate. However, the Respondent did not offer any flat for possession to any of the members of the Appellant.

The members of the Appellant took possession of their respective flats to refurbish the interiors and thereafter started occupying their respective flats and made arrangements for water and electricity by paying additional charges.

The members of the Appellant had made unauthorized constructions in the building, which resulted in a delay in obtaining the occupancy certificate.

The Respondent submitted that the complaint filed by the Appellant was barred by limitation. It was submitted that the cause of action arose in the year 1997 and the complaint was filed after 18 years.

The Respondent further submitted that it was not a service provider of water and did not receive any payment towards water charges or property tax. Accordingly, the Appellant was not a consumer under the Consumer Protection Act, 1986, and that the complaint filed by the Appellant would not be maintainable.

JUDGMENT:

The Apex Court relying on sections 3 and 6 of the MOFA, observed that a builder had an obligation to provide the occupancy certificate to the flat owners.

The Apex Court further observed that a builder was required to make payments towards outgoings such as ground rent, municipal taxes, water charges and electricity charges till the time

the property was transferred to the flat owners. Where the builder failed to pay such charges, the builder would continue to be liable even after the property was transferred.

The Apex Court opined that an obligation was cast on the Respondent to provide the occupancy certificate and it was required to pay the relevant charges till the occupancy certificate was provided.

The Apex Court observed that owing to the Respondent's failure to obtain an occupancy certificate, there was a direct impact on the members of the Appellant to pay higher taxes and water charges to the municipal authority. The continuous failure to obtain an occupancy certificate was a breach of the obligations imposed on the Respondent under the MOFA and amounted to a '*continuing wrong*'. The Appellant was therefore entitled to damages arising out of the continuing wrong and the complaint was not barred by limitation.

Relying upon its decisions passed in ***Wing Commander Arifur Rahman Khan and Others vs DLF Southern Homes Private Limited and Others***² and ***Pioneer Urban Land***

Infrastructure Limited vs Govindan Raghavan³, the Apex Court held that the failure to obtain an occupancy certificate or abide by contractual obligations amounted to a deficiency in service.

The Apex Court also held that the Respondent was responsible for transferring the title of the flats to the Appellant along with an occupancy certificate. The failure of the Respondent to obtain the occupation certificate was a deficiency in service for which the Respondent was liable and that the members of the Appellant were well within their rights as 'consumers' to pray for compensation to recompense for the consequent liability (such as payment of higher taxes and water charges by the members) arising from the lack of an occupancy certificate.

The Apex Court allowed the appeal against the impugned order and directed the National Consumer Disputes Redressal Commission to dispose the complaint within a period of three months from the date of the order of the Apex Court.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

² (2020) 16 SCC 512

³ (2019) 5 SCC 725