

M/S. VVN DEVELOPERS PVT. LTD. V. VINAKAY D VADGAONKAR

1. M/S. VVN DEVELOPERS PVT. LTD.
THROUGH ITS DIRECTOR(MR. PRAKSH G PIMPUTKAR)
FLAT NO. 611/612, 6TH FLOOR, FLOT NO.10, THE ADVAIT
CO-OPERATIVE HOUSING SOCIETY LIMITED, M.D. KENI
ROAD, BHANDUP (EAST)
MUMBAI-400042

.....Appellant(s)

Versus

1. VINAKAY D VADGAONKAR
FLAT NO. 102, DEVRISHI APARTMENT, PLOT NO. 10,
ADVAIT SOCIETY, M.D. KENI ROAD, BHANDUP(EAST)
MUMBAI-400042

2. MRS. PALLAVI VADGAONKAR

FLAT NO. 102, DEVRISHI APARTMENT, PLOT NO. 10,
ADVAIT SOCIETY, M.D. KENI ROAD, BHANDUP(EAST)
MUMBAI-400042

.....Respondent(s)

Case No: FIRST APPEAL NO. 649 OF 2021

Date of Judgement: 03 Jan 2023

Judges:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE, MEMBER

For the Appellant : Mr. Apoorv Shukla, Advocate

For the Respondent : Ms. Nandini Singla, Advocate

Facts

Six appeals (no. 644 to 649 of 2021) have been filed by M/s

VVN Developers Pvt. Ltd. (the 'builder company') against an interim order dated 06/05/2021 passed by the Maharashtra State Consumer Disputes Redressal Commission in six consumer complaints (no. 576, 577, 579, 580, 581 and 582 of 2019). The respondents are individual flat buyers (the 'complainants') in a housing project developed by the builder company

– The interim order directed the builder company to:

1) Clear dues of the Municipal Corporation so that the flats of complainants are not sealed for non-payment

2) Not prevent complainants from using common amenities

– The order was passed to ensure flats are not sealed and amenities can be used till the next date of hearing on 09/07/2021

– The complaints allege several deficiencies by the builder like:

1) Failure to obtain occupation certificate and completion certificate

2) Failure to execute conveyance deed and handover documents

3) Failure to form a Housing Society

4) Non-payment of property taxes and water bills

5) Overcharging maintenance and collecting water charges without accounts

6) Denying use of amenities

Court's Opinions

Builder company sought to withdraw the appeals and reserve right to argue before State Commission. Court allowed withdrawal while observing the interim order has financial implications. It must be finally decided expeditiously within a reasonable time frame. State Commission should now proceed to decide the case on merits per law. If it turns out dues ought to have been paid by complainants, amount spent by builder may be considered. Similarly restrictions or costs related to amenities should also be considered. Interim arrangements concerning payment of dues and access to amenities need to be finally determined. When such interim orders are passed, corollary is the case must be decided

quickly and not delayed indefinitely

Arguments

Builder Company:

Seeks to withdraw appeals. Reserves right to argue its case before State Commission

Complainants:

Support withdrawal of appeals. Seek time-bound disposal of complaints in State Commission

Sections

Appeals filed under Section 51(1) of the Consumer Protection Act, 2019. Against interim order passed under the Consumer Protection Act, 1986

Cases Referred/Cited: None

Laws Referred:

Consumer Protection Act, 2019. Consumer Protection Act, 1986

Conclusion

Appeals withdrawn as builder company to argue before State Commission. State Commission directed to decide complaints expeditiously within 3 months. Day-to-day hearing to be held if not decided in 3 months

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Court

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Full Text of Judgment:

1. These 06 appeals, no. 644, no. 645, no. 646, no. 647, no. 648 and no. 649 of 2021, have been filed under section 51(1) of the Act 2019 in challenge to the Order dated 06.05.2021 of the State Commission in complaints no. 576, no. 577, no. 579, no. 580, no. 581 and no. 582 of 2019.

2. We have heard the learned counsel for the appellant (the 'builder co.') and for the respondents (the 'complainants')

and have perused the record.

3. The Order under challenge is an interim order; the case has as yet to be finally decided by the State Commission. Its operative paragraph is reproduced below for reference:

ORDER

1. Opponents are hereby directed to clear the dues of Corporation so that Corporation should not seal the flats of the complainants for non-payment of Corporation dues. Opponents are further directed not to prevent the complainants from using common amenities.

2. Interim order to continue till the scheduled date 09/07/2021 when matters are already fixed for filing evidence of the parties.

3. The interim Order has been passed to ensure that the municipal corporation does not seal the flats of the complainants for non-payment of its dues as well as to enable the complainants to use the common amenities.

4. The overall context in which the Order appears to have been passed can be appreciated to some extent from the following extracts of the complaint in complaint no. 576 of 2019 (the other complaints are similarly worded):

GIST OF THE CASE

The complainant purchased a flat in a building which has been constructed by the Opposite Parties (Builders / Promoters). The Opposite Parties have failed to obtain Full Occupation Certificate, Building Completion Certificate, failed to execute Deed of Conveyance in favour of the society and related compliances. The Opposite Parties have also not formed the Co-operative Housing Society. Further, the Opposite Parties are collecting monies in cash for property taxes, water charges and other maintenance charges at an exorbitant rate. Additionally, there are several other deficiencies. Hence, the present complaint has been filed for Non-compliances of Statutory Obligations' and other monetary

claims. para 15. The complainant submits that below mentioned are the statutory obligations which the Opposite Party no.2 has failed & neglected to perform / obtain:

i)Occupation Certificate not yet obtained.

ii)Building Completion Certificate not yet obtained

iii)Co-operative Housing Society has not been formed and registered till date.

iv)Property taxes have not paid by Opposite Parties to statutory authorities.

v)Water bills have not been [paid to statutory authorities.

vi)Original documents about the construction of the building including IOD, CC, Approved Plans and related original documents have not yet been handed over to the complainants' / flat purchasers.

para 16. The Complainants states that the Municipal water has been obtained on "humanitarian grounds" as per "Brihan Mumbai Mahanagar Palika" rules exorbitant rates. The complainant states that as there is no Occupation Certificate till date, the complainant is constrained to pay water charges at double rate. The Complainant states that the Opposite Party has collected 55,762/- from him towards the water charges and other services for which the Opposite party has failed to provide any accounts. Therefore, the complainant is entitled to get reimbursement of the money unlawfully collected from him. Herewith marked and annexed is the copy of the Notice dated 16/11/2018 received from the Opposite party as ANNEXURE "C-3".

5. During the course of the arguments on the correctness or otherwise of the impugned Order, learned counsel for the builder co. requests for an interlude to seek instructions.

6. After an interlude, the learned counsel submits on instructions that the builder co. wishes to withdraw its instant 06 appeals. However it simultaneously craves liberty to raise all its issues and contentions and to make all its submissions before the State Commission. The learned counsel further submits on his own volition that considering the very nature of the interim relief that has been provided to the complainants vide the impugned Order, i.e. directing the

builder co. to pay the municipal corporation dues and to allow use of common amenities without restrictions or costs etc., it will be per se just and also becomes necessary that for reasons of financial implications the matter may be finally decided most expeditiously within a reasonable and definite time-frame.

7. We are not entering into the merits of the Order since a submission has been made on behalf of the builder co. that it wishes to withdraw the instant appeals and will raise all its issues and contentions and make all its submissions before the State Commission.

8. We may but observe that the State Commission shall now in its course proceed to decide the case on merit as per the law and pass a fair order with the equities balanced. Specifically, while deciding the matter finally, if it is borne out, on merit, that the municipal corporation's dues ought to have been paid by the complainants and not by the builder co. the State Commission shall so rule and take into consideration the amount incurred by the builder co. as a consequence of its present interim Order and make the requisite direction in its final Order striking balance. Similarly, if it is borne out, on merit, that the use of common amenities has some restrictions or calls for costs etc. attached thereto the State Commission shall so rule and make the requisite direction in its final Order. Paying the municipal corporation's dues and access to common amenities is an interim arrangement during the pendency of the case and the issues will be finally decided when the matter is finally disposed of on merit.

9. We find substance in the submission made by the learned counsel for the builder co. that when an interim order of such nature is passed, in which certain dues are ordered to be paid by one party and access to amenities is ordered unconditionally without regard to aspects of restrictions or costs etc. if any, a natural corollary most certainly flows that the case ought not be allowed to procrastinate for an unreasonable or indefinite period but be decided within a

reasonable and definite time-frame.

10. As such, while allowing the builder co. to withdraw the instant 06 appeals, we make it explicit that the builder co. shall be at liberty to raise all its issues and contentions and to make all its submissions before the State Commission in the normal course before the State Commission. We also deem it just and necessary to request the State Commission to decide the matter as expeditiously as possible, preferably within a period of three months from today, and further that if for whatever reason it turns

out that the matter could not be decided within the aforesaid period the State Commission may then undertake day-to-day hearings on priority and decide the matter with utmost dispatch. So disposed.

11. The Registry is requested to send a copy each of this Order to the parties in the appeals and to their learned counsel within three days. It is further requested to most immediately send a copy of this Order to the State Commission by the fastest mode available. The stenographer is requested to upload this Order on the website of this Commission immediately.