

MATHIYAVARNAM MURUGAIYA THEVAR & 2 ORS. v. M/S. AJMERA HOUSING CORPORATION

MATHIYAVARNAM MURUGAIYA THEVAR & 2 ORS.

...Appellant

M/S. AJMERA HOUSING CORPORATION

...Respondent

Case No: CONSUMER CASE NO. 404 OF 2019

Date of Judgement: 11 December 2023

Judges:

SUBHASH CHANDRA
PRESIDING MEMBER

For Appellant: MR. SHANKAR DIVATE, ADVOCATE

For Respondent: None.

Facts:

Complainants booked villas in Ajmera Villows project developed by Opposite Party (OP). Complainants paid full sale consideration but several promised amenities not provided. These include – garden area, terrace area, club facilities, etc. OP charged additional amount towards increased super built-up area, club membership fees, electricity and water connection charges etc. Complainants allege these are illegal. Sale deed shows discrepancy between promised and actual areas for terrace and garden. Also states purchasers have no rights beyond carpet and built up areas. OP failed to resolve issue of access to club house facilities due to injunction obtained by residents of adjoining property, despite collecting membership fees.

Arguments by Complainants:

Denied promised amenities but were still charged for the same. Additional amounts collected by OP have led to unjust enrichment. Sale deed mentions less terrace and no garden area, contrary to what was promised. Cannot access common club facilities on adjoining property due to civil injunction. But still being charged membership fees. Charged for statutory dues and taxes not actually deposited by OP with authorities.

Arguments by OP:

None. OP remained ex-parte.

Court's Opinions and Decision:

Complainants signed sale deed knowingly, which did not include separate garden area. As per Clause XV of sale deed, club facility is common for villa and apartment residents. So complaint about lack of separate facility not justified. Regarding statutory dues, complainants have to pay so can't complain for non-payment by OP. Sale deed shows 1/3rd terrace area provided for exclusive use. So charges not for full 800 sq ft as alleged. Only issue upheld about denial of access to promised facilities. Though promised, OP failed to resolve the injunction issue. Allowing OP to charge membership fees without providing access to facilities is unjustified.

Order:

Complaint partly allowed. OP to resolve access issue within 2 months else refund amounts collected towards membership fees with interest. Can re-start collecting fees once issue resolved and access granted. OP to pay Rs 15,000 litigation cost to each complainant.

Sections and Laws Referred:

Section 12(1)(c) and Section 13(6) of Consumer Protection Act, 1986.

Case Laws Referred:

No case laws were referred in the order.

Full Text of Judgment:

1.This complaint filed under section 12 (1) (c) read with section 13 (6) of the ConsumerProtection Act, 1986 (in short, 'the Act') alleges deficiency in service on the part of theopposite party who is the developer of a project 'Ajmer Villows', Bangalore in which thecomplainants were allotted the residential villas constructed by the opposite party.

2..The brief facts of the case are that the applicants on application have been allotted thefollowing villas and had made payments as per the details indicated:

S no.	Applicant's Name	Villa no.	Date of Allotment /booking	Date of agreement	Date of taking over the possession	Actual cost paid as per cost sheet	Actual amount paid as per the deed/agreement of sale
1.	M M Thevar	B 22	08.12.2014	30.01.2015	29.05.2015	2,88,91,075/-	2,64,49,200/-
2.	Ranjeet Kumar	A – 5	05.06.2015	22.07.2015	26.10.2015	1,77,27,150/-	1,66,38,440/-
3.	Mohit Srivastava	A 13	11.03.2016	30.03.2016	04.06.2016	1,63,36,842/-	1,51,99,800/-

3.The complainants allege that the opposite party has failed to provide various facilities and amenities promised to them in the brochure, sale agreement and numerous advertisements. They are also aggrieved by the imposition of unjustified costs on thecomplainants such as additional charge for increase in the super built up area, selling of roadin the form of garden, including car parking, inclusion of terrace area in super built up area,additional charges on account of electricity connection provided by BESCO/ KPTCL, water and sewerage charges by BWSSB and illegal imposition of service tax. The complainants have also filed an application under section 12 (1) (c) claiming reliefs on behalf of other similarly placed buyers in the same project having the same interest and grievances. Despite this application being allowed on 16.02.2021 and a paper publication done as per proof publication filed by Complainant on 26.12.2020, no other

similarly placed allottee came forward to get impleaded. The complainants are before this Commission with the prayer to direct opposite parties:

a.To hand over all the amenities and facilities as promised in the brochure, agreement and sale deed, to the complainants and all other villament buyers having the same interest;

b.To pay to the complainants and other villament buyers with same interest compensation@ 12% per annum on the amount deposited by the villament buyers with the opposite parties for the entire period of delay in handing over the promised amenities and facilities or in the alternative, in case of non-provision of the promised amenities and facilities, direct opposite parties pay to the complainants and other villament owners with same interest a sum of Rs.50,00,000/- each;

c.To refund to the complainants and other villament buyers with same interest, the charges illegally collected by the opposite parties towards BSECOM/ KPTCL and BWSSB with 18% interest per annum;

d.To refund to the complainants and other villament buyers with same interest the amount collect towards club house with 18% interest;

e.To refund to the complainants and other villament buyers with same interest, the amount collected on account of garden area with 18% interest;

f.To refund to the complainants and other villament buyers with same interest, the amounts collected on account of terrace area with 18% interest;

g.To refund to the complainants and other villament buyers with same interest, the amounts collected on account of service tax with 18% interest;

h.To refund to the complainants and other villament buyers with same interest, the amounts collected on account of legal expense with 18% interest;

i.To refund to the complainants and other villament buyers with same interest, the amounts collected on account of maintenance charges till the formation of resident welfare association with 18% interest;

j.Opposite party 1 and opposite party no.2 to pay to the complainants and other flat buyers with same interest a sum of Rs.25,00,000/- each on account of mental harassment and trauma;

k. Award cost of the complaint to the complainants; and
l. Pass any such further order or orders which this Hon'ble Commission deems fit and proper in the facts and circumstances of the present case.

4. Opposite party was declared ex parte on 16.02.2021, when the matter was listed for final hearing since he has not entered appearance despite notice and has also not filed any reply to the complaint.

5. I have heard the learned counsel for the complainants and perused the material on record. For reasons of convenience, reference to Sale Deed and the house/ plot will be made based on details of the allotment to complainant no.1.

6. Learned counsel for the complainants submitted that the opposite party has failed to provide the promised amenities and charged additional amount under various heads resulting in his unjust enrichment without any benefits to the complainants. Complainants have been denied the promised amenities and facilities such as garden area and terrace area and have been charged for amenities that they have not been provided. The prayer in the complaint therefore seeks various reliefs in view of these deficiencies.

7. On behalf of the complainants it was contended that complainant no.1 had paid the entire sale consideration of Rs.2,88,91,075/- including Rs.14,40,000/- towards 800 sq ft of terrace, Rs.36,63,000/- towards 2035 sq ft garden area in respect of villa no.B 22. Complainant no 2 had paid the sale consideration of Rs.1,77,27,150/- including Rs.6,80,680/- towards 374 sq ft terrace and Rs.4,56,820/- towards 251 sq ft of garden area in respect of villa no. A 5. In respect of complainant no.3, sale consideration of Rs.1,63,36,842/- included Rs.6,10,867/- towards 374 sq ft terrace and Rs.6,77,833/- towards 415 sq ft garden relating to Villa no. A 13. It is contended that the complainants were required to pay additional amounts towards terrace and garden area and while the promised terrace and garden areas were stated to be 800 sq ft and 2035 sq ft (in respect of complainant no.1), the actual Sale Deed mentions only 267 sq ft of terrace area and garden area. It is also contended that opposite party no.2 had

categorically mentioned in the Sale Deed that the buyer's right would be restricted to carpet area and the built up area only. It is, therefore, submitted that the opposite party has failed to give the garden area as promised and charged for a larger area of the terrace area while not executing the Sale Deed for the full area promised. It is contended that as promised in the brochure, no separate area was ear-marked for garden area except a small back yard garden carved out of the unit area. As no garden areas were available, the opposite party had wrongly charged the complainants for the garden area which had been included in the unit price. The other amenities promised in the brochure such as mini golf course, football field, landscaped pathways, tennis court, children's play area, squash court, gymnasium, spa, badminton, table tennis, billiards, swimming pool etc., as part of the club facilities were not accessible, since these had been constructed on the adjoining larger property of the opposite party which the complainants were restrained from using on account of an injunction order obtained by the Association of residents in the larger property. The opposite party had undertaken to resolve the issue on 21.08.2015 but had failed to do so despite having collected Rs.1,00,000/- towards Club Membership charges. Complainants also contend that multiple charges have been collected towards deposits for electricity, water supply and sewerage to KPTCL/ BSECOM/ BWSSB and that the service tax collected has not been deposited by the opposite party with the relevant authorities, as ascertained by way of an RTI application. It is submitted that the BWSSB has also stated that the project area did not fall within its jurisdiction and that KPTCL has no connection with the electricity supply which is the responsibility of BSECOM. It is further contended that the service tax collected was over and above the Sale Agreement and had not been deposited with the Competent Authority. With regard to the maintenance charges it was stated that although the opposite party had categorically stated that these charges were directly payable to the Association as per the cost sheet and sale deed, the opposite party was collecting maintenance charges from the complainants. It was also stated that the opposite party had not formed the Association of Residents as promised and despite collection of maintenance charges from residents was not paying it to the various vendors which had led to the suspension of

essential services. Therefore, the complainants prayed that the complaint be allowed and relief prayed for be granted.

8. Notice issued to the opposite parties on 03.03.2020 was returned back with postal remarks 'left'. However, as per the track report, notice was served on 07.03.2020 to opposite party no.2. Dasti notice was collected on 20.02.2020. However, proof of dasti service not filed by the counsel for the complainant till date. A show cause notice was issued to the opposite party on 25.11.2020 which as per the track report was served on 01.12.2020 on opposite party no.1, although, service was incomplete in respect of OP 2. Notice was again issued to the opposite party and was served on 28.12.2020. None has been appearing on behalf of the opposite parties. Hence, vide order dated 16.02.2021 it had been ordered that opposite parties be proceeded ex parte.

9. Complainant filed his evidence and written submissions. I have heard the learned counsel for the complainant and perused the records carefully.

10. It is evident from the record that the complainants had entered into an Agreement with the knowledge of the architectural plans of the villas indicating the lay out of the garden and parking space. The Sale Agreement was also signed by them with the knowledge of the layout which did not include any garden area.

11. As per clause XV, the purchaser/ complainants had entered into a Sale Deed as per which it was made clear that the club developed on the larger property would be the common facility for the residents of the apartment complex and the villas. The contention of the complainant, therefore, that no separate club facilities have been constructed cannot be justified. It is apparent that there is no injunction in a civil suit that restrains complainants as residents of villas from using the same. Having undertaken to provide common facilities and having undertaken to resolve the issues between the users of the two properties, the opposite party has been negligent in not providing the issues as undertaken by it. However, until the opposite party resolve the issue regarding the usage of club by the

complainants it is charging membership and maintenance fees from the complainants is unjustified.

12. As regards the issue of statutory dues, the complainants cannot make that a grouse since the same has to be paid by them. Non-payment of the statutory dues to the competent authority as alleged cannot also become a subject of a consumer complaint.

13. The contention of the complainant that the opposite party has charged for areas ear-marked for terrace and garden areas which have not been provided/ handed over or which measures less than what was promised has been considered. It is seen that the Sale Deed mentions the suit property to be 3884 sq feet undivided share with 267 sq ft of the terrace area being 1/3 of the area of 800 sq ft. It also mentions that:

6. "The purchaser has the exclusive right to use the private garden area of two thousand thirty five square feet which is attached to the Schedule C Property. 7. The purchaser has the right to use the common area provided in the villows development area and the limited access area of the Schedule 'A' property being inform of common roads, pathways, garden area and other common amenities and facilities in the Schedule 'A' property. From a reading of the Sale Deed, the contention of the complainant that 800 sq ft terrace had been sold to them as per the Sale Deed is not found to be the correct interpretation since only 1/3 rd area has been provided/ sold and exclusive right of use has been provided. It cannot therefore be said that the opposite party charged the complainants for the terrace area of 800sq ft and conveyed only 267 sq ft.

14. From the above, it is evident that the only issue which remains outstanding is the levy of membership fee for the Club and maintenance fee by the opposite party towards the club facilities which the complainants have been prevented from utilising in view of the injunction obtained by the residents of other, larger area. From the record, the civil injunction was promised to be resolved by the opposite party which is an admission of the lack of access for the complainant. The contention of the complainants that they be allowed to use the same therefore, cannot be said to be unjustified.

15. For the reasons stated above, I find merit only in this contention of the complainants. The complaint is therefore, partly allowed and with the directions to the opposite parties to resolve the issue of use of club facilities by the complainants within two months of this order. The opposite parties are directed not to charge any membership or maintenance fee for the period for which the complainants have been deprived of the use of club facilities. In case this issue is not resolved by the opposite party within this period, it shall refund the amount collected to the complainants with interest @ 6% per annum. However, the opposite party shall have the right to collect the same as and when the issue is resolved from which date the complainants shall be eligible to be members of the club subject to payment of membership and maintenance fees as prescribed. In addition to this, the opposite party shall also pay Rs.15,000/- each as litigation cost to the complainants.

16. All pending IAs, if any shall stand disposed of by this order.