NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 3644 OF 2017

1. M/S. AAKRUTI AMITY APARTMENT OWNERS ASSOCIATION (REGD) & 2 ORS. .....Complainant(s)

Versus

1. AAKRUTI REALTORS & 4 ORS.

A apartnership firm represented byt its partner Sri Vithal Shamji Patel A/2 Raj Sneha, Opp, Ration Office S.N Road,

MULUND (W)

MUMBAI-4000080

2. AAKRUTI NIRMITI LTD.

Represented by its Chairman and MD. Sri Manilal Valji Patel AT 002 Chanakya, Opp. T. Ward Office Devidayal Road,

MULUND EAST, MUMBAI-400081

3. SRI. P. KRISHNAPPA

S/o Sri Pilliah Kammasandra Sampige Nagar Road, behing Aakruti Amity Apartment Kammasandra Village Athibele Hobli, Anekal Taluk

BANGALORE,

4. SRI. P. LAKASHMANA

S/O SRI PILLIAH KAMMASANDRA SAMPIGE NAGAR ROAD, BEHIND AAKRUTI AMITY APARTMENT ATHIBELE HOBLI, ANEKAL TALUK

BANGALORE,

5. SRI P. ANANDA MURTHY

S/O SRI PILLIAH KAMMASANDRA SAMPIE NAGAR ROAD, BEHIND AAKRUTI AMITY APARTMENT KAMMASANDRA VILLAGE ATHIBELE HOBLI, ANEKAL TALUK

BANGALORE .....Opp.Party(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE COMPLAINANT : MR WILLS MATHEWS, MR DHANESH M NAIR ADVOCATES

FOR THE OPP. PARTY : NONE – EX PARTE

Dated : 01 January 2024

ORDER

1. The brief facts of this consumer complaint filed under section 21 of the Consumer Protection Act, 1986 (in short, 'the Act') are that the first complainant was a society formed by apartment owners in Aakruti Amity for the purpose of promoting the welfare of the residents of

the Aakruti Amity Apartments through coordinated action in the interest of the owners and to represent the apartment owners before the appropriate authorities. The second and the third complainants are residents and owners of the flats sold by the opposite party no.1. Opposite party nos.1 and 2 referred to as Developers and respondent nos. 3 to 5 referred to as Land Owners had entered into a Joint Development Agreement (JDA) to develop the land bearing Sy no.6/1 (measuring 3 acres 19 guntas situated at Kammasadra Village, Athibele Hobli, Anekal Taluka, Bangalore Urban District) belonging to the land owners into a multi storied residential apartment complex named 'Aakruti Amity'.

2. The Land Owners and the Developers entered into an agreement of sharing the saleable areas and the complainant/ Land Owners executed a Power of Attorney in favour of the Developers to obtain necessary plan sanctions and approvals from various authorities to develop the apartment complex in terms of the sharing agreement and the JDA.

3. Pursuant to the JDA and the sharing agreement, the opposite party after wide publicity, invited prospective purchasers to book flats by paying an advance with the construction in progress. The brochure stated that 'Aakruti Amity' would be spread over about 3.5 acres featuring five majestic multi-storey towers in a spectacular setting. The opposite party entered into an Agreement to Sell with several prospective buyers who are also part of the complainant association. Complainant no.1 has also placed on record the Sale Deed dated 22.05.2012 between the opposite party and Secretary of the complainant no.1. It also placed on record that a sale deed dated 11.11.2013 was entered into between the opposite party and complainant no.2. The complainants were promised that the entire apartment complex with all amenities as per the brochure would be fully functional by June 2009 or within one year of their entering into the Agreement of Sale based on which assurance the said Agreement was executed. The opposite party also promised that an Apartment Owners Association would also be formed thereafter under the Apartment Ownership Act, 1972.

4. It is stated that complainant nos. 2 and 3 paid the entire sale consideration to the opposite parties. However, the opposite parties failed to deliver the amenities promised and also did not form the Association of the buyers as promised. The complainants were therefore, forced to form an association called 'Aakruti Amity Apartment Owners Association' under the Karnataka Societies Registration Act, 1960 on 25.01.2016. The complainant no.1 and its various members also requested the opposite parties several times orally and in writing to allot an office space for their effective functioning in the said building premises to no avail.

5. Complainants allege that in the original plan, construction of only 176 flats was planned, whereas the revised plan has 284 flats. According to the original plan, the ground floor had no flats while the revised plan has 19 flats and the first floor, which had only 15 flats initially, now has 21 flats. This has proportionately reduced the share of the complainants' flats.

6. The complainants further state that the completion date was long overdue and the opposite parties have failed to provide individual BESCOM meter connections to a vast majority of members of the complainants and are collecting charges from the members individually. It is further stated that the apartment complex was to be built with all clearances

from various authorities including the Pollution Control Board and Fire Safety Department. The complainants also allege that the free drive ways are blocked with construction activity/ material and separate electricity connections and generators are not provided. The storm water drainage was also stated to be not functional as a result of which even a moderate rainfall caused heavy water logging resulting in the basement being always flooded. Rain water also reportedly enters the lift area and water needs to be pumped out from the elevator. The common area is also water logged. Even the power back up is not upto the mark. This also amounts to gross deficiency in service. Complainants allege that several open live wires are hanging precariously over the construction material over every block in the apartment complex; plastering of walls and the roof in the common area has not been completed and other amenities have either not been completed or are inadequate.

7. Due to these deficiencies, complainants issued a legal notice to the opposite parties on 17.08.2016 with a request to rectify the deficiencies pointed out within 30 days from the receipt of the notice and also requested to pay the complainant a just and fair compensation working out the actual loss in terms of the present market value of the property. The notice was replied to by OP nos.3 to 5 (Land Owners) on 08.09.2016 wherein they admitted to most of the allegations. The opposite parties however, shifted the responsibility to OP nos.1 and 2/ Builders in the joint venture. OP nos. 3 to 5 initiated legal proceedings against the Developers, OP nos.1 and 2, to complete the project. The complainants allege that there was no response from OP nos.1 and 2. Hence, a complaint was filed before this Commission which was permitted to be withdrawn on 15.05.2017 with liberty to file a fresh complaint on the same cause of action. On 26.06.2017, the Builder and the Land Owner stated that the dispute between them was settled and that construction will be resumed. Hence, the complainant is before this Commission with the prayer to:

i. Pass an order directing the OP nos.1 to 5 jointly and severally to remove all the defects as stated in paragraph nos. 11,13,14,15,16,17,18,19,21,22 and 23 of the complaint in the residential premises of 158 owners of the flat as mentioned in Annexure P 4;
ii. Pass an order directing the OP nos. 1 to 5 jointly and severally to provide all facilities assured by them as pointed in Annexure P 12 to 158 owners of the flat as per annexure P 4 within three months' time;
iii. Pass an order directing the OP nos. 1 to 5 jointly and severally to pay a compensation of Rs.1,00,000/- each to 158 flat owners as per annexure P 4 for mental agony, harassment etc.,;
iv. Pass an order directing the OP nos. 1 to 5 jointly and severally to pay a sum of Rs.6.70 lakh each to 158 owners of the flat as per annexure P 4, being the compensation/ damages for the illegal sale of car parking and club house area to third party;
v. Pass a direction to the OP nos. 1 to 5 jointly and severally to pay Rs.3.41 lakh each to 158 owners of the flat as per the annexure P 4 towards the interest on the amount of Rs.8.38 crores deposited with the OPs since January 2014 till December 2017;
vi. In the alternative to prayer no. A to E, this Hon'ble Court may be pleased to pass an order directing the OP nos.1 to 5 jointly and severally to pay compensation/damages of Rs.17,56,98,937/- as per calculation in Annexure P 13 to 158 owners of the flat as per

Annexure P 4 with 18% interest from the date of purchase of the flats along with future interest till realisation;

vii. Pass an order directing the respondent nos.1 to 5 to continue to provide the basic maintenance service to the complainants/ owners of the flat; and

viii. Pass such other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case including the cost of the present complaint.

8. I have heard the learned counsel for the complainant. However, none appeared on behalf of the opposite parties on 26.07.2023 despite several opportunities. They were therefore, proceeded *ex parte* and the matter reserved for orders.

9. Learned counsel for the complainant filed his written submissions. Opposite parties 3 to 5 did not file their short synopsis of arguments. However, opposite party nos. 1 and 2 had filed their written statement by way of an affidavit. The same has been considered.

10. Learned counsel for the complainant stated that the complainant was a registered Association of Apartment Owners and complainant nos. 2 and 3 are the members of complainant no.1, Association. Learned counsel for the complainant averred that the opposite parties increased the number of flats resulting is denial of the proposed area, club house, parking area, garden, open space and other common facilities which were part of the rights of the complainant as per the understanding between the complainant and the opposite parties at the time of purchase of flats. Learned counsel for the complainant submitted that opposite parties were delaying the construction and provision of facilities promised and hence complainants were not able to lead a normal life as the premises were not habitable. Learned counsel for the complainant contended that the opposite parties 3 to 5 used the area for common facilities for construction of additional flats reducing the value of the property and that the original plan which had provided construction of 176 flats was revised to 284 flats leading to congestion. The ground floor which had no flats in the original plan now had 19 flats and the first floor now had 21 flats against the 15 flats proposed. This has resulted in reduction of the complainants' proportionate share in balconies, common amenities, common areas and undivided right, title and interest in the common land area causing loss to the complainant and unjust enrichment for the opposite parties. Learned counsel for the complainant submitted that even after repeated reminders the opposite parties did not take the issues seriously.

11. Opposite parties no.1 and 2 in their written statement denied all the allegations in the complaint except those which are specifically admitted. Opposite party nos.1 and 2 stated that the complainants have not approached this Commission with clean hands as held by the Hon'ble Supreme Court in ***Arunima Baruah vs Union of India & Ors***., (2007) 6 SCC 120 that:

> "*Judicial Review is the basic future of the constitution and it provides for a discretionary remedy. Access to justice is a human right. A person who has a grievance against the state, a forum must be provided for redressal thereof. The court's jurisdiction to determine the lis between the parties, therefore, may be viewed from the human rights concepts of access to justice. The same, however, would not mean that the court will have*

no jurisdiction to deny equitable relief when the complainant does not approach the court with a pair of clean hands…….."

12. It was further submitted that averments in the complaint were baseless and devoid of any merit against OP nos.1 and 2 as the complainant has tried to mislead the Commission. It is further alleged that the complainants have not substantiated the allegations by documentary evidence as per the Section 13 (1) (c) of the Act. Opposite party nos.1 and 2 also contend that the Association does not have any *locus standi* to file a complaint as the flat owner's society formed under Karnataka Societies Registration Act, 1960 was for the limited purpose of managing the day-to-day affairs of maintenance and that the complaint does not qualify to be a valid complaint since there was no substantiation by the complainant of either any deficiency of service or of any unfair trade practice as per Section 2 (c) of the C P Act, 1986.

13. On merits, the complaint filed was alleged to be false as complainant no.1 was not a 'consumer' under Section 12 (1) (a) of the Act, while complainant nos. 2 and 3 were consumers within the ambit of section 12 (1) of the Act and the relief sought, by their own admission, was only Rs.11 lakh per consumer, which was beyond the pecuniary jurisdiction of this Commission. Opposite party nos.1 and 2 allege that all claims have expired in year 2016 as the complaint was filed in 2017 beyond the period of limitation. Hence, opposite party no.1 contends that the complaint is not maintainable but frivolous and vexatious and is liable to be dismissed.

14. The preliminary objections of the opposite parties have been considered. From the foregoing, it is evident that the complainants' case is that opposite party nos.1 and 2 modified the construction plans and constructed an apartment complex with 108 additional apartments, failed to provide the promised amenities, construction quality of apartments was poor and also failed to create an association of residents to manage the complex.

15. IA no.19799 of 2017 is an application seeking that the complaint be treated as a joint complaint. In view of the fact that the grievances of the appellant are identical to those of the Association, the complaint has considered as a joint complaint. IA no.19799 of 2017 is accordingly allowed in view of the respondent's contention that the Association was formed to address day to day issues which include the present grievances.

16. Complainant alleges that there has been deficiency in service on the part of the opposite party nos. 1 to 5/ Developers in not executing the project as per the specifications and in failing to rectify the same. The change in the building plans is without notice or authorisation. The original plan had provided for the construction of 176 flats; however, the revised plan has 284 flats, the ground floor had not proposed flats, while the revised plan has 19 flats and the first floor which had only 15 flats has now 21 flats. This has wrongfully reduced the complainants' proportionate shares in balconies, common amenities, common areas and undivided right, title and interest in the common land area causing wrongful loss to the complainants and unjust enrichment for the opposite parties. It has also caused a nuisance to all the residents of the apartments and has built pressure on the common areas and parking. It is also averred that OPs

1 to 5/ Developers are guilty of unfair trade practice since they had collected deposits and failed to adhere to the terms of the Agreement.

17. While the opposite party denies the contentions, it has contended that the complaint is barred by limitation as the complainants were handed over possession and the complaint was filed in 2017. The complainants are also alleged to have also not substantiated their contentions with evidence and the complainant Association is argued to lack the authorisation to file the complaint. It is also contended that the complaint is not within the pecuniary jurisdiction of this Commission. The limitation period for filing a complaint as per section 24 (A) of the CP Act, 1986 being two years, in the instant case limitation for filing the complaint commenced from the respective dates of execution of sale deed, i.e., 22.05.2012, 11.11.2013 and 12.12.2015, till the actual delivery of possession to all the complainants. The complainant filed this complaint on 11.12.2017.

18. It is apparent that the cause of action is a continuing cause as held by the Hon'ble Supreme Court in ***Meerut Development Authority vs Mukesh Kumar Gupta*** IV (2012) CPJ 12 decided on 09.05.2012 which laid down that "failure to deliver possession of the plot, constitutes recurrent / continuing cause of action". Hence, this contention of the opposite party does not sustain.

19. On the issue of pecuniary jurisdiction as per section 21 (a) (i) the jurisdiction for filing the complaint in NCDRC is Rs. 1.00 crore. However, in ***Ambrish Kumar Shukla and 21 Ors vs Ferrous Infrastructure Pvt. Ltd.,*** I 2017 CPJ 1 (NC) as well as ***Renu Singh vs Experion Developers Pvt. Ltd.,*** CC no.1703 of 2018, this Commission has decided the issue of pecuniary jurisdiction and held that the amount for filing a complaint will include aggregate value of services plus reliefs claimed. The complaint has also been allowed as a joint complaint. Therefore, it is apparent that jurisdiction to file the complaint cannot be urged by the opposite party as a valid ground.

20. From the foregoing discussion, it is evident that the opposite party had promised various facilities and amenities to the complainants who are allottees in its project. This is evident from the Agreement to Sell, especially Clause III. The issue of default on the part of the complainant is not an issue since it has not been raised by the opposite party who has handed over possession of the flats. This is a case of deficiency in the quality of construction and lack of maintenance on part of the opposite party who has also not discharged its contractual obligation of establishing a Residents Welfare Association to address issues of upkeep and maintenance. The opposite party have chosen to remain unpresented and to file any defence or to counter the allegations of the complainants despite being served. The allegations must therefore, be concluded to be admitted by the opposite party.

21. For the reasons mentioned above, and in view of the facts and circumstances of this case, the Consumer Complaint is found to have merits and is accordingly allowed with the following directions:

a. Opposite party shall take action to obtain all clearances from the concerned competent authorities to provide individual BESCOM meters and to provide all the amenities promised and charged for as per the Builder Buyer Agreement within three months of this order;
b. Opposite party shall compensate the complainants in the form of interest @ 6% on the respective amounts paid by them individually from the date of taking over possession till the rectification is done; and
c. Opposite party shall pay litigation cost of Rs.35,000/- each to the complainants.

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

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SUBHASH CHANDRA
PRESIDING MEMBER