

**BEFORE THE KARNATAKA STATE CONSUMER DISPUTES
REDRESSAL COMMISSION, BANGALORE.**

DATED THIS THE 23rd OF SEPTEMBER 2010

PRESENT

**HON'BLE JUSTICE MR.K. RAMANNA : PRESIDENT
SRI. A.M. BENNUR : MEMBER
SMT. RAMA ANANTH : MEMBER**

**Appeal Nos.3718/2009, 3719/2009, 3720/2009, 3721/2009,
3722/2009, 3723/2009 & 3724/2009**

**Appeal Nos.3718/2009 To
3724/2009**

Mr.Ganesh Shetty K
S/o. Late.Krishna Shetty,
Aged about 39 years,
Proprietor of M/s Appoorva
Associates, Asheesh Opposite Party before the DF
Apartments, Kodialbail,Appellant
Mangalore 560 575.

**(Appellant is same in all the
Appeals)**

(By Shri/Smt Vijaya Krishna
Bhat)

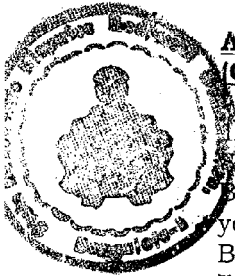
-Versus-

**Appeal No.3718/2009
(Complaint No.11/2009)**

P.Vasanth M Bhandarkar
/o. Late.P.Madhava
Bhandarkar, Aged about 47 Complainant before the DF
years, Residing at madhavRespondent
Bagh, Sri.Mukya Prana
Temple Road,
Mangalore 575 001.

**Appeal No.3719/2009
(Complaint No.37/2009)**

1. Mrs. Mithila Prabodh Bolur
W/o.Prabodh C Bolur,
Aged about 58 years.



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2. Mr.Prabodh C Bolur
S/o.B.Chandrashekhar,
Aged about 66 years,
No.1 and 2 are residing at Flat
No.301.

3. Mr.Naveen Kille,
S/o.Sri.Poovappa Kille
Aged about 29 years,
Residing at Flat No.402.

4. Dr.Sudesh Shetty
S/o.S.Jayaram Shetty,
Aged about 36 years.

5. Mr.Jayaram Shetty
S/o.late.Sri.Ganapayya shetty,
Aged about 65 years,
No.4 and 5 are residing at Flat
No.404.

6. Mr.Anand P Rao,
S/o.Sri.Sachidanand Rao
Aged about 37 years,
Residing at Flat No.502.

7. Mr.manish Dugar
S/o.Sri.Vimal Kumar dugar,
Aged about 29 years, Residing
at Flat No.701.

8. Sri.Shekar R Shetty
S/o.late. Ramayya Shety,
Aged about 56 years.

9. Smt.Shankari S shetty
W/o.Sri.Shekar R shetty,
Aged about 49 years,
No.8 & 9 are residing at Flat
No. 902.

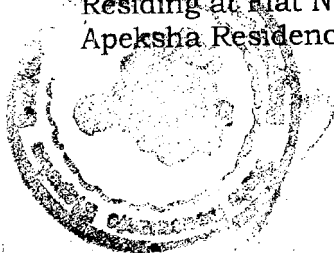
All are resident Apeksha
Residency, Warehouse Road,
Mangalore.

Complainants before the DF
....Respondents

Appeal No.3720/2009
(Complaint No.98/2009)

1. D.N.Hasad Rao
Residing at Flat No.204,
Apeksha Residency,

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Warehouse Road,
Mangalore.

Complainant before the DF
....Respondent

Appeal No.3721/2009
(Complaint No.97/2009)

Ms.Rashmi Shetty
D/o.Sri.M.Ravindra Shetty,
aged about 25 years,
Residing at Flat No.604,
Apeksha Residency,
Warehouse Road,
Mangalore.

Complainant before the DF
....Respondent

Appeal No.3722/2009
(Complaint No.36/2009)

1. Rajesh Shenoy
S/o.Sri.Sadashiva Shenoy,
aged about 37 years.

2. Roopa Shenoy,
W/o.P.Rajesh Shenoy
aged about 34 years,
No.1 & 2 are residing at
Flat No.102.

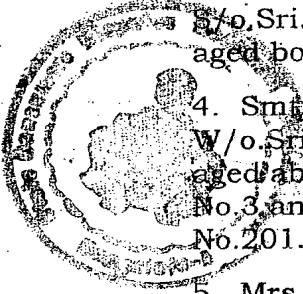
3. Sri.Fazul Raheem,
S/o.Sri.K.P.Abdulla
aged about 43 years.

4. Smt.S.Afsabi,
W/o.Sri.K.Fazlul Raheem
aged about 31 years,
No.3 and 4 are residing at Flat
No.201.

5. Mrs.Prasanna Kumari
Aged about 43 years,
Residing at Flat No.201.

6. Sri.K.Raghavendra Rao
S/o.Sri.Vishwanath Rao,
aged about 48 years.

7. Smt.Kavitha R Rao
W/o.Sri.Raghavendra Rao,
aged about 42 years,
No. 6 & 7 are residing at



Flat No 204,
All are residing at
Apeksha Residency,
Warehouse Road, Mangalore.

Complainants before the DF
....**Respondents**

Appeal No.3723/2009
(Complaint No.34/2009)

1. Padmanabha
S/o.K.Babu,
aged about 58 years,
Residing at Flat No.101,
Apeksha Residency,
Mangalore.

2. Mr.A.H.ramakrishna Shetty
S/o.late.Sri.K.Sanjeeva Shetty,
aged about 53 years,
Residing at Flat No.203,
Apeksha Residency,
Warehouse Road, Mangalore.

Complainants before the DF
....**Respondents**

Appeal No.3724/2009
(Complaint No.35/2009)

1. Chetan A Thakkar
S/o. Aravind M Takkar,
aged about 29 years,
Residing at Flat No.602,
Apeksha Residency,
Warehouse Road, Mangalore.
Represented by GPA Holder
and mother Smt.Hemalatha
Thakkar, W/o.Aravind M
Thakkar, Residing at Apeksha
Residency, Warehouse Road,
Mangalore.

Complainants before the DF
....**Respondents**

(By Smt /Smt P.I.Bhat in all
the appeals)

ORDER

SRI A.M. BENNUR, MEMBER

These are the seven appeals filed under Section 15 of the
Consumer Protection Act, 1986 by the OP in Complaint Nos.

11/2009, 37/2009, 98/2009, 97/2009, 36/2009, 34/2009, & 35/2009 on the file of District Consumer Disputes Redressal Forum, Dakshina Kannada, Mangalore being aggrieved with the order dated 15-09-2009.

The DF has passed a common order pertaining to the said seven complaints as the OP is one and the same in all the complaints, relief claimed, consumer disputes raised is almost same. In order to avoid the repetition of facts, multiplicity of reasoning, this Commission also deemed it fit in the interest of justice to dispose off all these appeals by way of a common order. Hence this order.

For the sake of convenience the Complaint number and the appeal preferred by the OP with respect to the said complaint is mentioned in the chart below.

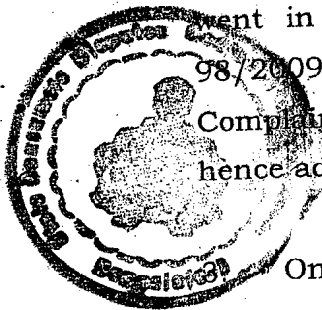
Sl. No.	Appeal Nos.	Complaint Nos.
01	3718/2009	11/2009
02	3719/2009	37/2009
03	3720/2009	98/2009
04	3721/2009	97/2009
05	3722/2009	36/2009
06	3723/2009	34/2009
07	3724/2009	35/2009



2. The brief facts of the case as could be seen from the averments of the complaint and the version are that, complainants being lured away with the advertisement and publicity issued by the OP who claims to be the promoter and builder of the multistoried residential flats under the name and style "M/s Apoorva Associates" thought of purchasing the flats

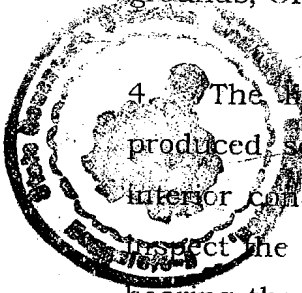
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of their choice. They opted to purchase the flats in the project floated by the OP in the name and style "Apeksha Residence" and paid the flat value including that of undivided share in the land where the said flats are built up. OP entered into construction agreement and promised to handover the flats duly completed in all respects on or before 31-08-2006. But thereafter some how OP failed to complete the said project as promised and handover the possession to the complainants. Complainants on examination of the said flats found that the building material used is of substandard, workmanship was not up to the mark. There was certain deficiency with regard to the tiles, lift, etc. Not only that OP failed to give them the completion certificate as contemplated. They also noticed that the construction of the said building to some extent is in violation of the building byelaw, rules and the license granted by MCC. OP to the reasons best known to him intended to encroach upon the parking area and was in a hurry to build the office. He has also collected an excess of the service tax etc. Not only that, without there being an approved sanctioned plan he attempted to construct a penthouse in the 10th floor. He has also not maintained his promise in providing the Telecom Cable, TV cable, Landscape, Katha Certificate etc. The repeated requests and demands made by the complainants went in futile. In Complaint Nos.11/2009, 97/2009 and 98/2009 even till today the possession is not handed over. Complainants felt unfair trade practice on the part of the OP, hence advised to file complaints.



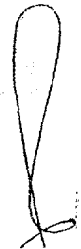
On appearance OP filed the version stating that the defence set out by the complainants in all the complaints is one and the same and contended that the complaints are devoid of

merit and false. Complainants are basing their claim only on the report of the Commissioner so also the brochures and pamphlets printed by the OP. OP completed the construction of the said building as contemplated by using standard materials. He has also approached MCC to regularize certain unauthorized construction under "Akrama Sakrama Plan". That is the reason why he could not obtain the completion certificate, door number, deed of declaration and earmark the car parking. There is no question of any deficiency in service much less unfair trade practice as alleged. He has kept up all the promise as per the agreement and provided all the basic amenities and facilities. Flat owners are liable to pay the service tax, VAT and other taxes to the Government. Whatever the amount that is collected from the complainants it is utilized towards the payment of required necessary charges to the statutory authority. Even till today the OP is maintaining the said flats. The other allegations are baseless. Among these grounds, OP prayed for the dismissal of the complaints.



4. The litigating parties lead their affidavit evidence and produced some documents. A technically qualified person, interior consultant is appointed as a Court Commissioner to inspect the flats in dispute and submit his report. Thereafter hearing the arguments, the DF was pleased to allow the said complaints vide its order dated 15-09-2009. Being aggrieved with the said order, now the OP has come up with these appeals which have filed under Section 136(2) of the Land Revenue Act. The grounds urged are as under:

5. That the DF has committed an error in relying upon the Commissioner's report. Though there is a proof of use of the



standard materials for the construction of the said flats and all the basic amenities and facilities as promised are provided by the OP it is lost sight by the DF. Due to some minor unauthorized construction OP has approached the MCC (Mangalore City Corporation) to regularize the same under "Akrama Sakrama Yojana", it is under consideration. Because of that he is unable to provide so called door number, Khata number, completion certificate etc., this fact is also not considered by the DF. DF mainly relied upon certain promises made in the pamphlet and broacher, it is basically wrong. Complainants are entitled for the amenities and benefits as per the terms of the agreement and that is conveyed to them under the sale deed this aspect is not considered by the DF. The order of the DF in awarding the compensation is arbitrary and not based on the facts and circumstances of the case. The conclusion arrived at, reasons assigned, findings recorded are perverse, unjust and improper. If the said order is not set aside, it is the appellant/OP who will be put to greater hardship and prejudice. Among these grounds, OP prayed for allowing these appeals.

6. Heard the arguments.

7. In view of the above said facts, the points now that arise for our consideration in this appeal are as under:

1. Whether the impugned order under appeal is erroneous, unjust and improper?
 2. If so, whether it calls for the interference from this Commission?
- To what order?

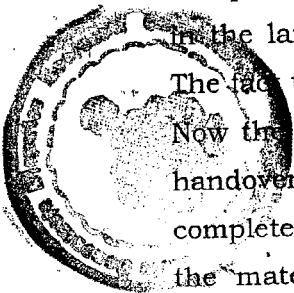


8. We have gone through the pleadings of the parties, both oral and documentary evidence, Commissioner's report, impugned order under appeal, grounds urged in the appeal memo and the arguments advanced. In view of the reasons given by us in the foregoing paragraphs, our findings on Point No.1 and Point No.2 are in negative and Point No.3 as per final order.

REASONS

9. OP filed these appeals under Section 136(2) of the Land Revenue Act before this Commission. On the face of it appeals under the said provision before this Commission are not maintainable. Any how in the interest of justice, we have all these appeals on merits as follows:

10. At the outset it is not in dispute that, complainants being lured away with the advertisement and publicity issued by the OP who claims to be the promoter and builder of residential flats thought of purchasing the flat of their choice in the project floated by the OP in the name and style "Apeksha Residence". Complainants purchased the flat including the undivided share in the land. A construction agreement came to be executed. The fact that OP received the entire flat value is not at dispute. Now the grievance of the complainant is that, OP promised to handover the said apartment on or before 31-08-2006 duly completed in all respect, but he failed to do so. Not only that the material used for construction of the said flat is of a substandard, workmanship is not up to the mark. OP failed to provide basic amenities and facilities as promised under the agreement and the sale deed. Their repeated requests and demands went in futile.



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11. It is further contended by the complainants that on examination of the said structure they noticed that OP has violated the building byelaws, rules and constructed the building against the approved sanctioned plan and the license that is granted. He has also attempted to put up the additional structure like a penthouse at the 10th floor and the space meant for car parking at the basement is being encroached to convert into his office premise and for some other purposes which has resulted the hardship to the flat owners to park their respective vehicles. It is further contended that the lift as promised is not provided and the money collected towards the tax, VAT etc., is mis-utilized and not only that it has collected in excess as against the approved plan. Hence they demanded the OP to attend to the said deficiency, but it went in vain.

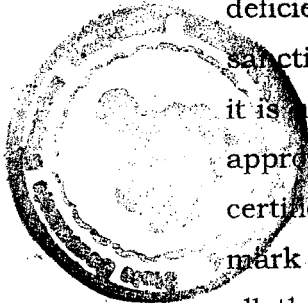
12. The fact that till today complainants in complaint No.11/2009, 97/2009 and 98/2009 are unable to take possession of the said flat and OP failed to deliver the possession after due completion of the structure is also not at dispute. The evidence of the complainants which finds full corroboration with the contents of the undisputed documents appears to be very much natural, cogent and consistent. There is nothing to discard the sworn testimony of the complainants. As against this unimpeachable evidence of the complainants the defence set out by the OP appears to be defence for defence sake may be to save his skin out of sin. OP has come up with a defence that the delay in handing over the said flats is due to heavy rain and due to no availability of the statutory clearance from the concerned department including three service connections. So OP indirectly admits that he failed to deliver



the possession as promised that too even after the receipt of entire sale consideration of the said flats.

13. When the complainants noticed the said deficiency they got appointed the Commissioner. Commissioner a technically qualified person who had experience in the field of civil works visited the spot and gave his report. The report is placed on record which clearly goes to show that there is lot of unattended work, material used is of substandard etc. As it is there is no personal ill will or grudge between the OP and the Court Commissioner so as to discard his sworn testimony. On the close scrutiny of the evidence and the defence of the OP he indirectly admits that he has constructed the said structure little excess as against the approved sanctioned plan issued by the MCC. In order to save himself he comes up with the defence that he moved the MCC under the "Sakrama Yojana" to rectify the unauthorized construction.

14. So this one admission again leads us to draw an inference that the approach of the OP is not fair and honest, he is a defaulter. He is expected to construct the building as per the approved sanctioned plan and those flats should have marketable value free from encumbrance and free from the deficiency. They should be built as per the approved sanctioned plan without giving scope for further litigation, but it is not done so by the OP. As admitted by the OP for want of approval from MCC he is unable to obtain the completion certificate, door number, deed of declaration and unable to mark the parking area of each and every apartment owners. So all these admitted facts clearly goes to show that there is a deficiency in service and unfair trade practice.



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15. OP has come up with a strange defence that there are in all 34 flats in the said project and some of the apartments are not yet sold, some portion of the building is under construction. So when OP promised the purchasers of the flat that he will complete the construction by 31-08-2006, now this strange defence creates the doubt about his bona-fides. He has failed to handover the required documents to the flat owners even after receiving the entire flat value including the undivided share in the land. The date of entering into construction agreement by these complainants and payment of the flat amount is admitted by the OP. There is a substantial proof that OP failed to keep the parking area as promised, but he encroached to some extent. There is a proof of violation of building rules and byelaws and unauthorized construction on the 10th floor. On the perusal of the records, OP is not subjected himself for cross-examination by the complainants in spite of sufficient time given to him. It appears OP wants to avoid the same may be to prevent the truth being brought out on record. So this approach of the OP also does not appears to be fair.

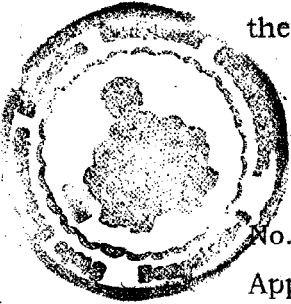
16. There is nothing wrong committed by the DF in placing reliance on the report of the Commissioner. Ex.C-24 speaks that the Deputy Commissioner has caused the notice to OP alleging non compliance of the building byelaws. Even the notice issued by the MCC speaks to the variation and deviation in the construction of the said building as against the approved sanctioned plan. It can be seen through Ex.C-25 and Ex.C-26. OP admits the said variations and deviations but come up with the defence that he sought for regularization of the same under



"Sakrama Yojana". It is not known when it will come into force and when the bona-fide purchasers of the flats were going to get the legal title over the property which they were purchased long back. Though complainants invested their hard earned money are unable to reap the fruits of their investment. For no fault of theirs they are made to suffer both mental agony and financial loss. It is all because of hostile attitude of the OP.


17. The DF has discussed each and every aspects of the deficiencies noticed in the construction of the said building and failure on the part of the OP in providing basic facilities and necessities as promised under the agreement as well as sale deed. Under such circumstances, the findings recorded, conclusion arrived at, reasonings assigned while dealing with the point for consideration appears to be just and proper. The appellant has failed to show before this Commission that the impugned order is erroneous and capricious and that it suffers from legal infirmity, unsustainable in law and so also that it suffers from any error apparent on the face it record requiring our interference. Appeals appear to be devoid of merit. Accordingly, we answer Point No.1 and 2 and proceed to pass the following:

ORDER

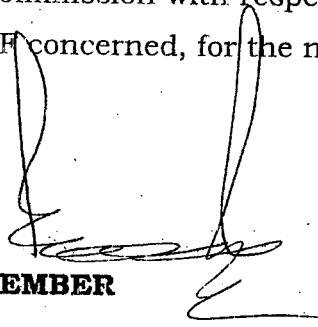


Appeal Nos.3718/2009, Appeal No.3719/2009, Appeal No.3720/2009, Appeal No.3721/2009, Appeal No. 3722/2009, Appeal No. 3723/2009 and Appeal No.3724/2009 are hereby dismissed.

Original order be kept in Appeal No. 3718/2009 and the copies be placed in other cases.



The deposit if any made by the appellant before this Commission with respect to these appeals be transmitted to the DF concerned, for the needful.



MEMBER

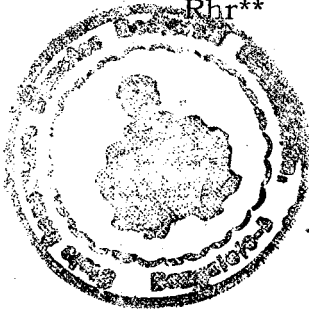


PRESIDENT



MEMBER

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CERTIFIED TO BE COPY (FREE)
P. K. Manjunath
Asst. Registrar-cum-Asst. Admn. Officer,
Karnataka State Consumer
Disputes Redressal Commission
BANGALORE.
Dated *8/10/10*