

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 4277-4283 OF 2010

(Against the Order dated 23/09/2010 in Appeal No. 3718-3724/2009 of the State Commission
Karnataka)

1. GANESH SHETTY K.

**M/s. Appoorva Associates, Asheesh Apartments,
Kodialbail
Managalore - 560003
Karnataka**

Versus

.....Petitioner(s)

1. P. VASANTH M. BHANDARKAR
& ORS.

Residing at Madhav Bagh, Sri. Mukya
Prana Temple Road
Mangalore - 575001
Karnataka

2. MRS. MITHILA PRABODH
BOLUR, W/O. SRI. SRI. PRABODH
C. BOLUR

Residing at Flat No. 301, Apeksha
Residency, Warehouse Road
Managlore
Karnataka

3. MR. PRABODH C. BOLUR, S/O.
SRI. B. CHANDRASHEKHAR

Residing at Flat No. 301, Apeksha
Residency, Warehouse Road
Mangalore
Karnataka

4. MR. NAVEEN KILLE, S/O. SRI.
POOVAPPA KILLE

Residing at 402, Apeksha Residency,
Warehouse Road
Mangalore
Karnataka

5. DR. SUDESH SHETTY, S/O. SRI.
S. JAYARARN SHETTY

Residing at Flat No. 404, Apeksha
Residency, Warehouse Road
Mangalore
Karnataka

6. MR. JAYARAM SHETTY, S/O.
LATE SRI. GANAPAYYA

Residing at Flat No. 404, Apeksha
Residency, Warehouse Road

Mangalore

Karnataka

7. MR. ANAND P. RAO, S/O. SRI.
SACHIDANAND RAO

Residing at Apeksha Residency,
Warehouse Road

Mangalore

Karnataka

8. MR. MANISH DUGAR, S/O. SRI.
VIMAL KUMAR DUGAR

Residing at Flat No. 701, Apeksha
Residency, Warehouse Road

Mangalore

Karnataka

9. SRI. SHEKAR R. SHETTY

Residing at Apeksha Residency,
Warehouse Road

Mangalore

Karnataka

10. SMT. SHANKARI S. SHETTY,
W/O. SRI. SHEKAR R. SHETTY

Residing at: Flat No. 902, Apeksha
Residency, Warehouse Road

Mangalore

Karnataka

11. MR. L.N. PRASAD RAO

Residing at Flat No. 204, Apeksha
Residency, Warehouse Road

Mangalore

Karnataka

12. MS. RASHMI SHETTY, D/O. SRI.
M. RAVINDRA SHETTY

Residing at Flat No. 604, Apeksha
Residency, Warehouse Road

Mangalore

Karnataka

13. RAJESH SHENOY, S/O.
SADASHIVA SHENOY

Residing at Flat No. 102, Apeksha
Residency, Warehouse Road

Mangalore

Karnataka

14. ROOPA SHENOY, W/O. P.
RAJESH SHENOY

Residing at Flat No. 102, Apeksha
Residency, Warehouse Road

Mangalore

Karnataka

15. SRI. FAZUL RAHEEM, S/O. SRI
K.P. ABDULLA

Residing at Flat No. 201, Apeksha
Residency, Warehouse Road

Mangalore

Karnataka

16. SMT. S. AFSABI, W/O. SRI. K.
FAZUL RAHEEM

Residing at Flat No. 201, Apeksha
Residency, Warehouse Road

Mangalore

Karnataka

17. MRS. PRASANA KUMARI

Residing at Flat No. 201, Apeksha
Residency, Warehouse Road

Mangalore

Karnataka

18. SRI K. RAGHAVENDRA RAO,
S/O. SRI VISHWANTH RAO

Residing at Apeksha Residency
Warehouse Road

Mangalore

Karnataka

19. SMT. KAVITHA R. RAO, W/O.
SRI RAGHAVENDRA RAO

Residing at Flat No. 204, Apeksha
Residency, Warehouse Road

Mangalore

Karnataka

20. SRI. RADMANABHA, S/O. SRI
K. BABU

Residing at Flat No. 101, Apeksha
Residency, Warehouse Road

Mangalore

Karnataka

21. MR. A.H. RAMAKRISHNA

SHETTY, S/O. LATE SRI K.
SANJEEVA SHETTY
Residing at Flat No. 203, Apeksha
Residencey, Warehouse Road
Mangalore

Karnataka
22. CHETAN A. TAKKAR, S/O.
ARVIND M. TAKKAR
Residing at Flat No. 602, Apeksha
Residencey, Warehouse Road
Mangalore
Karnataka

.....Respondent(s)

BEFORE

⋮

**HON'BLE MR. JUSTICE ASHOK BHAN, PRESIDENT
HON'BLE MRS. VINEETA RAI, MEMBER**

For the Petitioner : MR. V.N. RAGHUPATHY

For the Respondent : Mr.B.S. Prasad, Advocate

Dated : 15 Dec 2010

ORDER

Complainants (different complainants)/respondents, being lured by the advertisements issued by the petitioner, opted to purchase flats in Apeksha Residence and paid the flat value including the undivided share in the land. Petitioner promised to hand-over the flats on or before 31.8.2006. However, the petitioner failed to complete the project as promised and hand-over the possession to the complainants. On examination of the flats, the complainants found that the building material used was of sub-standard quality; workmanship was not up to the mark; there was deficiency with regard to the tiles, lift, etc.; the completion certificate was not obtained by the petitioner; the construction on the building to some extent was in violation of the building byelaws, rules and license granted by MCC. Petitioner had collected an excess amount of service tax, etc. So much so, without an approved plan, the petitioner tried to construct a penthouse on the 10th floor and did not keep his promise to provide telecom cable, TV cable, landscape, katha certificate, etc. Thus, attributing unfair trade practice on the part of the opposite party, different complaints were filed.

District Forum, after taking into consideration the pleadings of the parties as well as the evidence led by them, allowed the various complaints by a detailed order by issuing the following directions :

- a) *To deliver the possession of the common areas and provide the completion certificate, occupancy certificate and door number to the apartments.*
- b) *To provide all the amenities as agreed by the Opposite party under the agreement.*
- c) *To provide Deed of Declaration.*
- d) *To mark the car parking area to each of the apartment owners.*
- e) *To refund the extra amounts collected by the Opposite party from the Complainant by name Mr.Padmanabha Kuriyadi in complaint No. 34/2009 a sum of Rs.1,14,945/-, Rs.85,000/- by Mr.Rajesh Shenoy i.e., the Complainant No. 1 in complainant No. 36/2009, Rs. 91,265/- by Prasanna Kumari i.e., the Complainant in complaint No. 36/2009, Rs.65,386/- by A.H. Ramakrishan Shetty i.e., the Complainant No.2 in complaint No. 34/2009, Rs.28.165/- by Prabodh C. Bolur i.e., the Complainant No.2 in complaint No. 37/2009, Rs.1,31,901/- by Anand Rao i.e., the Complainant No.6 in complaint No.37/2009.*
- f) *To complete the building works and painting within one month from the date of this order.*
- g) *To set right the amenities and facilities by replacing the defective items.*
- h) *The Opposite party is not allowed to put up any, construction on the 10th floor and on the ground floor and cellar,*
- i) *Car parking area to any other use, it should be as per the approved plan and the Sakrama application filed by the Opposite party shall be withdrawn immediately.*
- j) *To form a owners association and to submit all original and connected documents pertaining to the said apartments to the*

owners association.

k) To deliver the possession of the apartment immediately to the Complainant in complaint No.11/2009 by taking endorsement from the Complainant.

Apart from the above the Opposite Party is directed to pay Rs.50,000/- (Rupees fifty thousand only) on each apartment (15 number of apartments) towards harassment and personal inconvenience suffered by the Complainants. The respective apartment owners are entitled to receive the same. And further we specifically direct that the Opposite party shall pay Rs.1,00,000/- (Rupees one lakh only) to the complainant in Complaint No.11/2009 towards harassment and personal inconvenience suffered by the complainants. And Rs.10,000/- (Rupees ten thousand only) awarded as cost of litigation expenses. The compliance/payment shall be made within 30 days from the date of this order.”

Petitioner, being aggrieved, filed separate appeals before the State Commission. State Commission has upheld the order passed by the District Forum and dismissed the appeals again by passing a considered and detailed order.

We agree with the view taken by the fora below. Petitioner is certainly guilty of deficiency in service, as he has not constructed the building in compliance with the building byelaws. Exhibit C-24 shows that the Deputy Commissioner had issued Notice to the petitioner alleging non-compliance of the building byelaws. Admittedly, the building had been constructed in variations and deviations of the approved sanctioned plan. Notice issued by the MCC speaks about the variation and deviation in construction of the said building as against the approved sanctioned plan. Petitioner admits the said variations and deviations but came up with the defence that he had sought for regularization of the same under “*Sakrama Yojana*”. It is not known as to whether regularization of the deviations to the sanctioned plan made by the petitioner would be given or not. The *bona fide* purchasers of the flats have been deprived of the legal title over the property, which they purchased long time back. The respondents had invested their hard earned money for purchase of flats but were unable to reap the fruits of their investment. It is not a case only of deficiency in service but gross negligence as well.

Findings recorded are findings of fact, which cannot be interfered within in exercise of revisional jurisdiction. Under Section 21 of the Consumer Protection Act, 1986, in revision, this Commission can interfere with the orders only if it appears that the Authority below has exercised jurisdiction not vested in it by law or has failed to exercise jurisdiction so vested or has acted in the exercise of its jurisdiction illegally

or with material irregularity. We find no error/irregularity in the exercise of jurisdiction by the State Commission in its impugned order.

Learned counsel for the petitioner contends that the compensation awarded is on the higher side. We do not agree with this submission. Respondents have been unduly harassed for over a number of years. No interference is called for. Dismissed.

.....J
ASHOK BHAN
PRESIDENT
.....
VINEETA RAI
MEMBER