

BEFORE THE CONSUMER REDRESSAL FORUM, TIRUVALLUR,  
TIRUVALLUR DISTRICT

Present : Mr. A.Ayyappan, M.A.B.L. Chairman  
Tmt. S.Sujatha, B.Sc. Member-1

CC No. 8 of 2012

2<sup>nd</sup> day of September 2013

Thiru D.Thiruvateeswaran  
L13A Sarvamangala Colony  
Ashok Nagar  
Chennai-600083

.. Complainant

Vs.

Principle Administrative Officer  
Central Government Employees welfare  
Housing Society  
6<sup>th</sup> Floor, A-Circle  
Janpath Bhavan  
New Delhi 11---1

.. Opposite party

For petitioner : Thiru D.Thiruvateeswaran  
(Party in person)

For Opposite party : Thiru M.Krishnamurthy  
And

ORDER

Thiru A.Ayyappan, Chairman

BRIEF HISTORY COMPLAINT

The opposite party has floated the scheme of housing in the year November 2005 at Paruthipattu, Madras, Phase II. As per the Central government employees welfare organization rules and terms D-type flat was allotted to the complainant in the year 2006. The said flat has to be completed within 30 months from 2006 was to be ended in June 2009. The sale consideration was to be payable

in 6 instalments. CMDA approval got it in the month of November 2006 The complainant has paid 5 instalments excluding 75% of the escalation cost alone was pending. The 6<sup>th</sup> instalment was to be payable to the opposite party only after handing over the possession and the said scheme has not been completed till date. It was refused and it is injustice and illegal for not allotting the car parking No. B1 III-Unit 45 to the complainant as per the letter of opposite party vide No. CND0983 dated 12.12.2011. The opposite party was sought for 6 months time to complete civil, electricity facility, laying of pipes since they were pending. Besides fencing and formation of road were not completed, Community hall cum office has not constructed and CMDA has not given approval until that date to construct the community hall. It has been stated in the complaint that the opposite party should not deny the car parking area and he never agreed to pay the amount for car parking.

Hence this complaint was filed for compensation of Rs. 5,50,000/- and Rs. 10,000/- towards litigation expenses to be granted to the complainant for the deficiency of service

The complainant has filed this complaint before this Hon'ble forum for the second time. He has already filed CC No. 40 of 2010 for the same cause of action. Aggrieved by the order to pay Rs. 50,000/- towards compensation the opposite party has filed FA 813

of 2012 before State Consumer Redressal forum and the same is pending. To hike the compensation amount from Rs. 50,000/- to Rs.90,000/- is pending before the State Redressal forum is pending. The petition for allotting car parking was rejected. Though the complainant knows that the relief can not be claimed in the consumer forum as he filed petition in CC No. 40 of 2010 for the second time to claim the amount from the opposite party. Out 572 allottees 230 allottees have paid the entire sale consideration and 80 allottees have taken possession of their respective portion. Except the complainant all the allottees have shown interest to pay the amount and to take possession. In respect of allotment of car parking could be decided only at the final stage. Since the limited car parking was available depends upon the payment from the complainant the car parking would be allotted. Similarly limited scooter parking also would be allotted other than the car parking allottees. As per the terms of the agreement the allottee who has been allotted the car parking has to pay the amount for as stipulated the terms and conditions and if same allotted on would be heavy financial loss to the opposite party.

3. The complainant has presented PW1 to PW4 and were marked. No documents were marked on the side of opposite party and no oral evidence from both sides.

Form both side averments the following issues have been taken into consideration

1. Whether any deficiency of service from the opposite party?
2. Whether complainant has got right to claim the reliefs as sought for in his complaint?
5. Issue No. 1

It is wrong that the statement of the opposite party to deny right of claiming the car parking to the complainant by allotting Madras Phase II scheme in respect of D-type car parking

If the car parking has been allotted at the free of cost to the complainant all the 350 allottees would claim the car parking on free of cost so that there is no possibility to comply with and the complaint has to be dismissed.

7. The complainant has filed the following citation as per Ex.A1 viz. The Supreme court of India Civil Appeal No. 2544 of 2010 dated 31.8.2010 held the following

“It is thus clear that the promoter has no right to sell stilt parking spaces “as these are neither “flat nor appurtenant or attachment to a flat”

The opposite party in his letter dated 1.7.2011 which being marked as PW2, as all beneficiaries of Chennai (Phase-II) Housing scheme of extract in the 4<sup>th</sup> page as follows:

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“Parking space(s) under stilts for cars are available for allottee/s of type B, C and D only at an additional cost of Rs. 1,50,000/- (one lakh fifty thousand only)/ allottee(s) of type-A will be allotted parking/s in the adjacent and/or nearest blocks of type-B or C or D since there are no parking under stilts for type-A. Second parking/s may be allotted after meeting the requirement of first parking of all the beneficiaries, at later stage by CGEWHO, if any parking, are unallotted or surrendered by any allottee subsequently”

In paragraph 5 of Ex.P3 sent by opposite party to complainant dated 12.12.2011

This is for your additional information that the project is in the verge of completion and likely to be completed for handing over by January 2012. The final call up notices, intimating the final cost of the dwelling unit/car parking etc., along with the offer of possession, may be issued some time during February 2012

As per Ex.P4 amount of Rs. 77,000/- was received from the complainant by the opposite party dated 28.4.2006.

Moreover Book issued by Central Government employees welfare housing organization (Brochure) in para 5 notes-iv

Few car/scooter parkings under stilts may be provided. Options for the same will be called towards end of the project and allotment

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made through a computerized draw (in case of higher demand) at extra cost to be intimated then. Cost of parking space(s), if allotted, would be called and become payable at the time of final instalment

In paragraph 8

“The construction is likely to commence during 2006 and is expected to be completed within 30 months thereafter

In paragraph 16

The cost of dwelling units, with or without garages for each scheme will be working out by the CGEWH and intimated at the time of announcing the scheme

In para 36(ii) it was mentioned that

The CGEWHO is only providing a service. It can in no way be held responsible for any claims of damages which may arise due to any reason whatsoever, including any commission or omission, by the CGEWHO or its employees

In addition 2012(4) CPR 370(NC)

Sri Lakshmi Saraswathi Apartments welfare association  
Rep. by its Secretary Sri S.Saranjit Singh

Vs.

G.Shiva Narayana & others

It was ordered that

“Complainant is not entitled to get parking area free of cost

Apart from that Delhi High court said in

WP © No. 588/2009(18<sup>th</sup> para

Supreme court in Civil appeal No. 2544 of 2010

Nahaichand Laloochand Pvt Ltd.,

Vs.

Panchali Cooperative Housing Society Ltd.,

“Decided on 31.8.2010 to contend that stilt car parking is common to all flat owners”

In the same paragraph

It was held that the stilt car parking space could not fall within the definition of a flat and was part of common area and could not be sold separately

Moreover it has to be considered that as per agreement between complainant and opposite party, the complainant initially has agreed to give the amount for car parking and now asked at free of cost. In such circumstances the complainant is not entitled to claim car parking. It is very essential to note that the order passed in CA No. 2544 of 2010 by National Consumer Dispute Redressal 2012 (4) dated 16.10.2012. According to the above judgment it is confirmed that the complainant is not entitled to claim car parking. As per the statement of opposite party, there is limited car parking is available and it would be allotted according to the amount paid. Hence it was not proved by the complainant that there is deficiency

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of service on the part of the opposite party. Hence issue No. 1 is answered against the complainant.

Issue No. 1

Hence there is no deficiency of service as per issue 1 by the opposite party and hence it is decided that the complainant is not entitled to claim any compensation and the issue No. 2 is also decided against the complainant.

Finally this complainant is dismissed. No cost.

This order has been dictated by the Chairman to the Steno and the same has been transmitted by him and typed and the same was gone through by the Chairman and pronounced on 2.9.2013 in the open court.

S.Sujatha

A.Ayyappan

Sd. Member-1

Sd/ Chairman

Documents filed by the complainant

Ex.A1 Civil appeal No. 2544/2010 Xerox

Ex.A1 – 1/7/11 Letter of opposite party

Ex.A3 12.12.11 Letter of Opposite party

Ex.A4 28.4.2006 Receipt

Documents filed by opposite party

Nil

S.Sujatha

A.Ayyappan

Sd. Member-1

Sd/ Chairman



8.9.2014

BY RPAD

To

1. Head Office & Correspondence Office  
6<sup>th</sup> floor, A-wing Janpath Bhawan  
Janpath, New Delhi-110001

2. Chennai Phase II Project site office  
Door No. 4, Balaji Street  
Gandhi Nagar (West)  
Avadi, Chennai -600054

Sirs

This is with reference to the CC No. 8 of 2012 in respect of order passed by the District Forum, Tiruvallur. Through the translator I have translated the judgment copy from tamil version to English version and a fee for the above matter is Rs. 3,000/- and the said payment may be released on receipt of this bill.

Thanking you,

Yours faithfully

(M.KRISHNAMURTHY)

ADVOCATE