

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION  
MAHARASHTRA, MUMBAI**

**FIRST APPEAL NO.FA/15/605 AND FA/15/606**

(Arisen out of Judgment and order dated 03/01/2015 passed by the Ld.Addl.  
Mumbai District in consumer complaint No.CC/11/305)

**First Appeal No.FA/15/605**

M/s.Mahavir Enterprises

Thru' its partners

(a) Shri.Dhiren Gala

(b) Shri.Kiran Shah

All of them having office at-  
105, Maryland apartment,  
Junction of D.K.Sandu Marg,  
Chembur, Mumbai 400 071.

Appellant(s)

Versus

1.Mrs.Padam S.Chandiramani

6/52, Shyam Niwas, Warden Road,  
Mumbai 400 026.

2.Kamlesh Bhavan Co.Op.Hsg.Society

At the hands of Mrs.Victor  
Member of its Managing Committee,  
Plot No.176 B(B),  
Balvikas Sangh Marg,  
4<sup>th</sup> floor, off D.K.Sandu Marg,  
Station Avenue Road,  
Chembur, Mumbai 400 071.

Respondent(s)

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**First Appeal No.FA/15/606**

Kamlesh Bhavan Co.Op.Hsg.Society  
At the hands of Mr.Godwin Victor  
Member of its Managing Committee,  
Plot No.176 B(B),  
Balvikas Sangh Marg,  
4<sup>th</sup> floor, off D.K.Sandu Marg,  
Station Avenue Road,  
Chembur, Mumbai 400 071.

Appellant(s)

versus

1.Mrs.Padam S.Chandiramani

6/52, Shyam Niwas, Warden Road,  
Mumbai 400 026.

2. M/s.Mahavir Enterprises

Thru' its partners

(a) Shri.Dhiren Gala

(b) Shri.Kiran Shah

All of them having office at-  
105, Maryland apartment,  
Junction of D.K.Sandu Marg,  
Chembur, Mumbai 400 071.

Respondent(s)

**BEFORE:**

**Hon'ble Mr.Justice A.P.Bhangale, President**

**Hon'ble Smt.Usha S.Thakare, Member**

**PRESENT:**

**For the**

**Appellant(s):** Advocate Shri.A.V.Patwardhan (FA/15/605)

Advocate Shri.Ajay Pawar (FA/15/606)

**For the**

**Respondent(s) : In FA/15/605**

Advocate Shri.S.B.Prabhavalkar for No.1

Advocate Shri.Ajay Pawar for No.2

**In FA/15/606**

Advocate Shri.S.B.Prabhavalkar for No.1

Advocate Shri.A.V.Patwardhan for No.2

**COMMON ORDER**

**Per: Hon'ble Mr.Justice A.P.Bhangale, President**

[1] Both these appeals questions validity and legality of the Judgment and Award dated 03/01/2015 passed by the Ld.District Forum, Mumbai Suburban District in consumer complaint No.305 of 2011 whereby the Ld.District Forum awarded in favour of the complainant directing the opponents to hand over possession of the flat No.102 situated in 'Kamlesh Bhuvan' (redeveloped). Possession was directed to be delivered within two months and compensation was awarded in favour of the complainant @ Rs.25/- per sq.ft. payable by the opponent No.1 together with interest @10% till the date possession is handed over to the 'Kamlesh Bhuvan Co-

operative Housing Society Ltd.' Litigation costs was awarded in the sum of Rs.5,000/-.

[2] Briefly facts are-

That the complainant Padam S.Chandiramani is a member of the Kamlesh Bhuvan Co-operative Housing Society Ltd. residing in flat No.3 since 1970. Since the building was in dilapidated condition and was redeveloped by M/s.Mahavir Enterprises (opponent No.1) under agreement from the society for redevelopment dated 19/12/2007. There was Tripartite Agreement between the developer, society and the flat purchasers on 19/12/2007. Developer had promised 20% more area than the area of the flat occupied in the old building and also assured performance under Bank Guarantee in the sum of Rs.Fifty Lakhs in favour of the society. Since flat purchasers will be put to inconvenience and hardship, builder/developer had promised sum of Rs.Twenty Four Lakhs to provide alternative residence till the redeveloped building is constructed within period of 18 months with promise that in the event building is not complete within time, the builder/developer would pay sum of Rs.35/- per sq.ft. for delay till actual possession is handed over of the building. Grievance of the complainant was that the developer did not perform its part of agreement which resulted into deficiency in service. Hence, complainant had prayed for compensation for mental anguish and harassment.

[3] We have heard submissions at the bar and also went through copies of documents sought to be relied upon by both the parties. It does appear that on 03/09/2008 there was a Tripartite Agreement in which developer agreed to complete the building within 18 months from the date of commencement certificate issued from the Municipal Corporation and also to pay compensation in case building is not complete and if developer fail to comply with the terms of agreement with the flat purchasers and the society. We are informed that the complainant is a senior citizen was isolated as far as decision for redevelopment taken by the society and the builder. The

grievance of the complainant was against the society as well as the developer as the complainant had to reside in transitory accommodation after vacating the building to be redeveloped. Since we find that there was a promise to pay sum of Rs.25/- per sq.ft of carpet area to the flat purchasers till new premises is handed over by the developer to the society and that compensation was not paid by the developer, the complainant was entitled to insist upon delivery of possession of the flat and to claim compensation for occupying transitory accommodation (expenditure towards rent payable).

[4] According to the Ld.Advocate for the appellant developer keys for all the 12 members were handed over to the society. However, the said society did not bother to handover keys to the complainant and to place the complainant in possession of the flat. In case of the building to be redeveloped care and precautions are required to be taken not only by the Co-operative Housing Society consisting of the flat purchasers in the building to be redeveloped but also promoter/developer/builder who has promised to redevelop the building and to handover possession of the new premises to the flat purchasers there was a breach of agreement not only on the part of the developer but also on the part of the society to put the complainant in possession within 24 months from the date the complainant vacated premises in possession. That being so, Ld.District Forum appreciated the facts, particularly when the society chose not to file written version in the complaint proceedings. According to the developer, the society was given possession in respect of all the flats in redeveloped building. Society in its turn did not hand over actual, physical possession of the flat to the complainant. That being so, since both these appeals (developer and society) wherein breach of Tripartite Agreement dated 03/09/2008 they were jointly and severally required not only to put the complainant in possession but to give complainant compensation in the sum of Rs.25/- per sq.ft. **In our view, the developer was liable to pay such**

**compensation @Rs.25/- per sq.ft till the developer delivers possession of the building to the society and society is responsible to pay compensation at the same rate from the date it took possession from the developer till it delivers possession to the complainant. We therefore dismiss both the appeals with direction as observed for payment of compensation to the complainant together with interest as ordered by the Ld.District Forum. We only clarify that the developers liability to pay compensation to the complainant @ Rs.25/- per sq.ft is from the date of default i.e. expiry of 24 months from the date of agreement to redevelop the property and construct the building till the possession of the building is handed over to the society. This compensation is payable by the developer i.e. opponent No.1 while from the date of possession is delivered to the society further compensation at the same rate is payable by the society to the complainant till society put the complainant in possession together with interest as already ordered. Complainant shall be entitled to claim compensation accordingly and shall be put in possession of flat No.102, 'Kamlesh Bhuvan' (redeveloped building). The appeals are therefore disposed of accordingly. No order as to costs of appeal.**

Certified copy of this order be supplied to the parties.

**Pronounced on  
12<sup>th</sup> April, 2018**

**[JUSTICE A.P.BHANGALE]  
PRESIDENT**

**[USHA S.THAKARE]  
JUDICIAL MEMBER**