STATE CONSUMER DISPUTES REDRESSAL COMMISSION
MAHARASHTRA, MUMBAI

CONSUMER COMPLAINT NO: SC/27/CC/80/2023

1. MS SEJAL PRAVIN SHAH
At present residing at:
1501 Om Apartments
DR. M. B. Raut Road,
Shivaji Park, Dadar (W),
Mumbai 400028.

2. SMT. MONAL H MEHTA
At present residing at:
19, Modi Bhavan,
Flat # 32, Pandita Ramabal Marg
Gamdevi, Mumbai 400007. **…Complainants.**

Versus

M/s Skyline Developers
A registered partnership firm
Having its office at
139, Lilla Villa, I. D. Bhuva Marg,
Wadala Marg,
Mumbai – 400031.
Through its partners
(1) Mr Rajan Kamdar
(ii) Mr. Suhas Patil,
(iii) Mr. Rajendra K. Deshmukh,
(iv) Sai Gansham Pathak **…Opposite Party.**

BEFORE:
Ms. Poonam V. Maharshi, Hon'ble Presiding Member.
Dr. Nisha Amol Chavhan, Hon'ble Member.

APPEARANCE :
For Complainants : Adv. S.B. Prabhavalkar a/w Adv. Nilesh Parte
For Opposite Parties : None (Ex-party)

ORDER
(Dated 07/10/2026)

Per: Dr. Nisha Amol Chavhani, Hon'ble Member

1. The present consumer complaint is filed under Section 34 read with Section 47 of the Consumer Protection Act, 2019, alleging deficiency in service and unfair trade practice by the Opposite Party (Developer).

2. It is the case of the complainants that, the Complainants (along with their late mother, Smt. Harsha Pravin Shah) owned a 1/3rd undivided share in a property known as "Magan Vihar" located at Matunga, Mumbai. For the purpose of redevelopment, the Complainants executed an Agreement to Assign dated 12.03.2010, a Supplementary Agreement dated 18.02.2015, and an Agreement to Offer Permanent Alternate Accommodation (PAA) dated 18.02.2015 in favour of the Opposite Party.

3. Complainant submitted that, as per the terms of agreements, the Opposite Party agreed to provide a Permanent Alternate Accommodation (Flat No. 402, admeasuring minimum 1395 sq. ft. carpet area) in the newly constructed building, along with two car parking spaces. The Opposite Party further agreed to pay monetary compensation, rent for temporary alternate accommodation, and a penalty for delayed possession. Furthermore, as per Clause 18 of the PAA Agreement, the Developer was obligated to register the agreement and bear the stamp duty and registration charges for up to 1000 sq. ft. of the allotted area.

4. Complainant contended that, While the Opposite Party handed over the physical possession of Flat No. 402 in May 2018, they failed to fulfil multiple crucial financial and statutory obligations under the executed agreements:

5. Complainant contended that, the Opposite Party failed to pay their share of the stamp duty (up to 1000 sq. ft.) and execute the registered PAA Agreement, despite the Complainants' readiness to pay their proportional share for the remaining area.

6. Complainant contended that, the Opposite Party failed to pay the agreed enhanced compensation of ₹88,00,000/- for the increased FSI (from 2.5 to 3), as stipulated in the Supplementary Agreement dated 18.02.2015.

7. The Opposite Party failed to pay the rent for Temporary Alternate Accommodation from December, 2017 to April, 2018 (amounting to ₹6,60,000/-), the penalty for delayed possession (amounting to ₹16,50,000/-), and the reimbursement for raw materials purchased by the Complainants (amounting to ₹10,00,000/-).

8. Instead of complying with their obligations, the Opposite Party issued a baseless legal notice dated 01.06.2022, wrongfully demanding ₹30,26,592/- towards alleged construction costs and accusing the Complainants of unauthorized alterations, despite having already obtained the Occupation Certificate (OC) on 04.05.2018.

9. Upon admission of the complaint, notice was duly issued to the Opposite Party. However, the Opposite Party failed to appear and did not file any Written Version within the statutory period. Consequently, vide Order dated 27.12.2023, the matter was proceeded ex-parte against the Opposite Party. We have heard the arguments advanced by Adv. S.B. Prabhawalkar for the Complainants and have perused the documentary evidence on record.

10. Since the Opposite Party opted not to contest the matter, the pleadings and the documentary evidence adduced by the Complainantsincluding the Agreement to Assign (2010), Supplementary Agreement (2015), PAA Agreement (2015), and the correspondence on recordremain completely uncontroverted and unchallenged.

11. After perusal of record, based on the pleadings, affidavits, and documentary evidence on record, the following key issues arise for our determination.

Sr. No.	Points	Findings
1	Whether the Complainants fall within the definition of 'Consumer' under the Consumer Protection Act, 2019?	Affirmative
2	Whether the Opposite Party is guilty of deficiency in service and unfair trade practice?	Affirmative
3	What order?	As per final Order

REASONS

As to Point No. 1

12. Upon careful perusal of the statutory provisions and settled jurisprudence, this Commission observes that the complainants squarely fall within the ambit of a "Consumer" as defined under Section 2(7) of the Consumer Protection Act, 2019.

13. The pivotal question is whether surrendering development rights in an ancestral property in exchange for a newly constructed flat and monetary compensation constitutes valid "consideration" for availing "housing construction services" under Section 2(40) of the Act. The complainants, holding a 1/3rd undivided share in the property known as "Magan Vihar," executed an Agreement to Assign on March 12, 2010, transferring their right, title, and interest in the land to the Opposite Party. In lieu of this surrender, the Developer undertook a clear contractual obligation to construct and deliver permanent alternate accommodation, specifically a flat admeasuring 1,395 sq. ft. carpet area, alongside additional financial compensation.

14. This commission, relying on the landmark pronouncement of the Hon'ble Supreme Court in *Faqir Chand Gulati vs. Uppal Agencies Pvt. Ltd.* (2008), it is well-established that when a landowner enters into a development agreement with a builder, where the builder retains a portion of the newly constructed property to cover costs and profits while delivering the remaining constructed

area to the landowner, the transaction is not a joint venture but a contract for service. The transfer of the complainants' undivided land share operates as the precise consideration paid for the construction services rendered by the Developer. Consequently, the complainants have successfully availed the housing services of the Opposite Party for consideration, establishing an unequivocal consumer-service provider relationship and vesting this Commission with the requisite jurisdiction to adjudicate the grievance.Accordingly, issue No. 1 is answered in the affirmative.

As to Point No. 2

15. Upon careful perusal of the unchallenged documentary evidence on record, the Commission observes that the conduct of the Opposite Party demonstrates a gross and deliberate dereliction of both contractual obligations and statutory duties, squarely falling within the ambit of 'deficiency in service' and 'unfair trade practice' under Sections 2(11) and 2(47) of the Consumer Protection Act, 2019.

16. Despite having secured the benefits of the development rights and handing over physical possession of Flat No. 402 in May 2018, the Developer blatantly ignored the statutory mandate of the Maharashtra Ownership Flats Act (MOFA), 1963, by failing to register the Agreement to Offer Permanent Alternate Accommodation, despite the Complainants expressed readiness to bear their proportionate share of the stamp duty. Furthermore, the Opposite Party arbitrarily withheld legitimate, crystallized financial entitlements owed to the Complainants, including the agreed transit rent arrears of Rs. 6,60,000/-, the delay penalty of Rs. 16,50,000/-, and the enhanced compensation of Rs. 88,00,000/- for the utilization of increased FSI, thereby breaching Clauses 6.4, 12.1, and 15.1 of the executed agreements.

17. The Commission further observes that the Opposite Party’s issuance of the demand notices dated 1stJune2022, claiming an arbitrary sum of Rs. 30,26,592/- for alleged unauthorized alterationsconstitutes a textbook example

of an unfair trade practice. Considering that the Municipal Corporation (MCGM) had already issued the Occupation Certificate on 4th May 2018, which inherently certifies building compliance, this belated demand notice appears to be nothing more than a retaliatory smokescreen deployed by the Developer to coerce the Complainants and evade their own mounting financial liabilities. Because the Opposite Party chose to remain *ex-parte* and did not adduce any evidence to contradict these averments, the Complainants' evidence stands thoroughly proved and unrefuted.

18. Consequently, the Commission holds the Opposite Party guilty of employing oppressive tactics and exhibiting a severe deficiency in the housing services rendered to the Complainants.Accordingly, issue No. 2 is answered in the affirmative.

As to Point No. 3

19. Upon careful perusal of the documentary evidence on record, which remains entirely unrebutted due to the ex-parte nature of these proceedings, this Commission observes that the entitlements of the Complainants flow directly from the explicitly codified clauses of the executed agreements. The Opposite Party is unequivocally bound by the Agreement to Assign dated 12.03.2010, the Supplementary Agreement, and the Agreement to Offer Permanent Alternate Accommodation (PAA) dated 18.02.2015. Regarding the prayer for specific performance, Clause 18.1 of the PAA Agreement explicitly casts a mandatory obligation upon the Developer to bear the stamp duty and registration charges to the extent of 1000 sq. ft. of the allotted premises.

20. The failure of the Opposite Party to execute and register this vital document, despite handing over physical possession of Flat No. 402 in May 2018, constitutes a blatant statutory violation under the Maharashtra Ownership Flats Act (MOFA), 1963. Consequently, the Complainants are rightfully entitled to a mandate directing the Opposite Party to register the said agreement, subject

to the Complainants contributing their proportionate share of the stamp duty for the area exceeding 1000 sq. ft., as mutually agreed.

21. Turning to the specific monetary claims, the evidentiary documents on record substantiate each head of the financial demands raised by the Complainants. The Supplementary Agreement dated 18.02.2015 solidifies the Opposite Party's commitment to pay an enhanced compensation of Rs. 88,00,000/- for the utilization of increased FSI (FSI 3), a contractual promise that the Developer has demonstrably evaded. Furthermore, the timeline established by the PAA Agreement required the Developer to hand over possession within 24 months from 15.06.2014, making the delivery due by mid-2016. Because possession was delayed until May 2018, the Complainants' demands for Rs. 6,60,000/- towards unpaid transit rent for the period between December 2017 and April 2018 (under Clause 6.4) and the contractual penalty of Rs. 16,50,000/- for delayed possession (under Clause 15.1) are legally sound and strictly in accordance with the signed terms. The unrefuted claim for the reimbursement of Rs. 10,00,000/- towards the purchase of raw materials is also allowed as it forms part of the uncontroverted pleadings supported by affidavit.

22. Finally, the Commission takes serious note of the Opposite Party's conduct following the handover of possession. Instead of fulfilling their financial and statutory obligations, the Developer issued a demand notice dated 01.06.2022, arbitrarily claiming Rs. 30,26,592/- from the Complainants under the guise of unauthorized alterations. Issuing such a baseless demand four years after the Municipal Corporation had already granted an Occupation Certificate (04.05.2018) is a transparently retaliatory tactic designed to intimidate the Complainants and obscure the Developer’s own severe defaults. Such conduct moves beyond mere deficiency in service into the realm of restrictive and unfair trade practices. The prolonged deprivation of rightful dues, the statutory vacuum created by the non-registration of the flat, and the consequent pressure from the newly formed housing society have undeniably subjected the

Complainants to severe mental agony, harassment, and financial hardship, thereby entitling them to substantial compensatory damages and the costs of this litigation.In light of the detailed reasoning and findings recorded against issue No. 1 and issue No. 2, we hereby allowed the complaint and passed the following order.

ORDER

1. The Consumer Complaint No. SC/27/CC/80/2023 is hereby allowed.
2. The Opposite Party is declared guilty of deficiency in service and unfair trade practice.
3. The Opposite Party is directed to execute and register the Agreement to Offer Permanent Alternate Accommodation dated 18.02.2015 in favour of the Complainants within 60 days from the date of receipt of this order. The Opposite Party shall bear the stamp duty and registration charges to the extent of 1000 sq. ft. carpet area, and the Complainants shall bear the proportionate cost for the remaining area, as per Clause 18 of the agreement.
4. The Opposite Party is directed to pay the Complainants the sum of Rs.88,00,000/- towards the enhanced FSI compensation as per the Supplementary Agreement dated 18.02.2015, along with interest at the rate of 8% p.a. from the date of default till actual realization.
5. The Opposite Party is directed to pay the Complainants the sum of Rs. 6,60,000/- towards arrears of temporary alternate accommodation rent, and Rs. 16,50,000/- towards the penalty for delayed possession.
6. The Opposite Party is directed to reimburse the sum of Rs. 10,00,000/- incurred by the Complainants towards the purchase of raw materials.
7. The Opposite Party shall pay a sum of Rs. 1,00,000/- to the Complainants towards compensation for mental agony, harassment, and hardship.

8. The Opposite Party shall pay a sum of Rs.50,000/- towards the cost of litigation.
9. Copies of this order be provided to all parties free of cost as per the regulations.

[Poonam V. Maharshi]
Presiding Member

Dr. Nisha Amol Chavhan
Member

NAC/aj