

Consumer Complaint no: 166/2008

Complaint date: 26/09/2008

Order date: 25/11/2008

Sh. Ajay Madhusudan Marathe, r/o 504 New Sarvodaya CHS ltd, sector 4, ,Plot 29-B, Vashi, Navi Mumbai 400703- Complainant

Vs

New Sarvodaya Co Housing Society ltd , Sector 4, Plot 29-B, Vashi, Navi Mumbai 400703- Respondent

Corum: President Sh. Mahendra G. Rahatgaonkar, Member – Sh. Mahadev Gunaji Dalvi

Present: Complainant himself with Adv. Praveen V. Desai for respondents Ad. R.C. Gosavi

Order

Thru President Sh. Rahatgaonkar

1) Complainant statement in brief is as follows:--

He has a pet dog named “Shimu”. This dog is staying with the family of the complainant since 1997. The dog is registered with Navi Mumbai Municipal Corporation & his license number is 2103 & KCI registration number is 97/002502. This registration and license number show that Dog is pet dog of complainant. Respondent is registered Co Op housing society. The society sent a notice to complainant on 11/5/2008 informing him that he cannot use society’s lift for the movement of the dog . When complainant protested , the society communicated to complainant that use of society’s lift by the dog may result in spread of diseases. The society informed the complainant on 28/5/2008 that he should get a certificate about the health of the dog from a veterinary doctor. The Bombay Veterinary College at Parel Mumbai issued a certificate that the dog has no infectious or contagious diseases. Even after submission of this certificate, the society continued with its stand of not allowing the dog to use the lift. Society went even further & passed an illegal resolution in the General Body Meeting (GBM) held on 3/8/2009 in this matter. The society did not give an opportunity to the complainant to explain his side. The dog is old & he is suffering with osteoarthritis, hence it is very difficult for him to use the stair case and use of lift is a must for the dog. Taking his prayer into account suitable order may be passed. Respondent may be ordered to allow the dog to use the lift. Also Compensation & legal expenses may be paid to the complainant by the society.

Affidavit is submitted supporting the complaint. Annexure contain notices sent by society dated 11/5/2008, 12/5/2008, 14/5/2008 and 28/5/2008; certificate issued by Bombay

Veterinary college on 16/6/2008, copy of the resolution passed on 11/6/2008, copy of the notice sent to society thru the lawyer, acknowledgement receipt, receipts about payment of maintenance payments, authority to lawyer etc.

2) Respondents have submitted reply with affidavit as follows (in brief)

The dog owned by complainant is not a consumer. Also he is not a person. Hence it is out of judicial purview of Consumer forum and hence the forum cannot address to complaint about the dog. Complainant has not paid the due amount as per rules of the society and hence a case under section 101 is filed against him. Society in its General Body meeting (GBM) held on 3/8/2008 has passed a resolution that pet animals like dogs , cats etc. cannot use the lift of the society. The complainant deliberately did not attend this meeting. It is for the safety & security of the members of the society, their families & visitors, that the pet animals were prevented from using the lift. No one can give guarantee about these animals & they can be dangerous. The complainant is not paying any extra amount for keeping the dog hence the complainant cannot use the lift for the movement of the dog . Hence the complaint to be rejected with expenses

The forum heard the arguments of both sides at the time of final hearing, went thru the documents submitted by them.

Following points were considered

Item no 1:-- Is the respondent responsible for deficiency in service to the complainant?

Answer: Yes

Item no 2:-- Is the complainant eligible for getting compensation and legal expenses from the society for mental agony / harassment?

Answer: Yes

Explanation for Item no 1:- It is pertinent to address the objections raised by the Society. As per society, it is out of purview of this forum as Dog is not a consumer of the society, as no separate charges are levied by society. Complainant is defaulter. The forum is of the view that society is registered co op housing society, and that complainant is member of the society .He pays the Maintenance charges to society .If the complainant is defaulter, the society is free and has recourse to act so as to recover the amount. But as a member of the co op society, the complainant is definitely eligible to lodge a complaint with this forum regarding deficiency in service & he is consumer of the society as per section 2 (1) (d) of the consumer protection act. In this matter, whether the dog is a consumer of the society is not a pertinent point, and only the point to be checked is whether the complainant is consumer of the society. Hence the arguments put forward by the society are being rejected since the forum does not find any substance in it.

On merits, forum has observed that the complainant is a resident of the building for a long time. The society is registered in 1982. Complainant has valid license for the dog issued by the Navi Mumbai Municipal Corporation. The dog is staying in this building with the complainant for the last 11 years. The dog is now old & is suffering with osteoarthritis. Complainant stays on top floor of the society & hence it is very difficult for the dog to use the stair case. Complainant has attached a certificate from the Bombay veterinary college dated 16/6 /2008 along with his complaint. This certificate states the following very clearly

“----- on clinical examination he is apparently healthy except he has acrylic dermatitis at the right metatarsal region (hind limb) wound at the left elbow. However he has no infections or contagious disease and is fit to keep at home. Since the dog is aged 11 years and having osteoarthritis he should be allowed to use lift of society. He has already been vaccinated against Antirabies, DHLPPi Corona which are valid upto May 2009._____”

With this certificate it is very clear that the dog owned by complainant is not suffering with any contagious disease & thus there is no possibility of any body else being affected. It is clearly mentioned in the certificate issued by the Bombay Veterinary College that the dog is vaccinated. It is also mentioned that the dog is 11 year old & suffering with osteoarthritis hence should be allowed to use the lift of the society. As per the forum the dog is staying with his owner & family for the last 11 years in the same building. Society has not brought to the notice of the forum any proof about the dog injuring any resident or visitor to the society. As per the complainant the dog needs to use the lift only 2-3 times day. The forum feels the stand taken by the society about the dog not being allowed to use the lift is incorrect. The complainant has obtained valid license for the dog & also registered the dog. Society cannot prevent members staying on higher floors from having pet dogs. Taking into consideration the age & health of the dog, the complainant must be allowed to use the lift for the dog. But the society without any justifiable reasons prevented the complainant from using the lift for his dog. Even after getting the certificate about dog's health from the authorities the society refused to allow the lift to be used for the movement of the dog. The forum feels this is deficiency in service by the society as per section 2(1) (g) of the consumer protection act. Society must allow the lift to be used for the movement of dog henceforth. Complainant should use the lift of the society for the movement his dog when no other person other than his family member is present in the lift. In case the dog urinates and/or dirties the premises of the society in any manner the responsibility of cleaning up will be with the complainant.

Explanation on point no 2:-- Forum feels the society has prevented the complainant from using the lift for the movement of dog without any justifiable reason although the dog is licensed & registered. The complainant has been staying in the building with his dog for the last several years & has been using the lift of the society for movement of his dog. The authorities have given a certificate that the dog will not lead to any danger or affect health of any body. Deliberately ignoring all these aspects, the society prevented the lift being used for movement of the dog. Due to this illegal action taken by the society the complainant was put

to great inconvenience. An old dog could not use the lift of the society. Complainant & his family went thru mental agony & suffered. Since the deficiency in service by the society is responsible for this suffering, complainant is entitled to get Rs. 3,000/- compensation from the society. Not only that but since the society did not look into the complaint of the complainant properly, the complainant had to approach the forum. He had to take help of a lawyer. The forum feels the complainant is entitled to get Rs. 2,000/- towards legal expenses from the society.

Thus we are giving the final order as follows:--

Final Order

- 1) Complaint no 166/ 2008 is partially accepted.
- 2) Order is passed that the society should allow the lift to be used for movement of the dog.
- 3) Society should pay the complainant Rs. 3,000/ towards compensation & Rs.2,000/- towards legal expenses within 45 days from the date of this order.
- 4) In case the order above is not followed within the time limits given, the complainant will be entitled to get interest on the pending amount at the rate of interest of 12 % per annum.
- 5) Certified True Copy of this order shall be given to both the parties immediately.

Date: 25/11/2008

Place: Konkan Bhuvan, Navi Mumbai

Sh. Mahendra Rahatgaonkar
President

Sh. Mahadev Gunaji Dalvi
Member

Thane District Additional Consumer Dispute Redressal Forum Thane at CBD Belapur

