

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION
MAHARASHTRA**

**EXECUTION APPLICATION NO. SC/27/EA/17/130
IN SC/27/CC/13/349**

1. Mr.Sunil Sadanand Vaiti
C/o. Mr.Ashish Patankar
Building No.4, Flat No.203,
Green Acres Phase II
Ghodbunder Road, Kavesar,
Thane – 400 607

2. Mrs.Kirti Sunil Vaiti
C/o. Mr.Ashish Patankar
Building No.4, Flat No.203,
Green Acres Phase II
Ghodbunder Road, Kavesar,
Thane – 400 607

.....Applicants/org.complainants

Versus

1. M/s.Sterling Constructions
(Through its Partners Sameer Ziaudddin Khan &
Sarosh Khan)
212/213, Building No.5
Shree Mahalaxmi Industrial Premises CHS
Jogani Complex, V.N.Purav Marg
Sion-Chunabhatti, Mumbai 400 022

2.Mr. Sameer Ziaudddin Khan
(partner of M/s.Sterling Constructions)
212/213, Building No.5
Shree Mahalaxmi Industrial Premises CHS
Jogani Complex, V.N.Purav Marg
Sion-Chunabhatti, Mumbai 400 022

3.Mr.Sarosh Khan
(partner of M/s.Sterling Constructions)
212/213, Building No.5

Shree Mahalaxmi Industrial Premises CHS
Jogani Complex, V.N.Purav Marg
Sion-Chunabhatti, Mumbai 400 022Respondents/org.OPs

BEFORE: Justice S.P.Tavade – President
Vijay C.Premchandani – Member

PRESENT: Advocate Ajay Pawar for applicant.
Advocate Sajira Jondhale i/b. Advocate U.B.Wavikar along with
Advocate Baliram Kamble for respondents.

FINAL ORDER

(Dt. 06/08/2026)

Per Hon'ble Vijay C.Premchandani – Member

1. The present execution application is filed by the applicants (original complainants) u/sec.27 of the Consumer Protection Act 1986 for non-compliance of the order passed by this Commission in Consumer Complaint no.349/2013 (CC/15/349).

Facts of the application:-

2. The applicants contended that in the original complaint following impugned order is passed:-

1. Consumer complaint is partly allowed with costs quantified at Rs.15,000/- (Rupees Fifteen Thousand only) payable to the complainants by the opponents.

2. Opponents are guilty of deficiency in service for not handing over possession of the flat to the complainants.

3. Opponents are directed to complete the construction of said flat No.A-701, 7th floor, admeasuring 537 sq.ft. carpet area in the residential project "Sterling Apartments" at Survey No.292(Part), CTS No.406-1A(pt.), 407 and 407-1 of village Kurla of Mumbai Suburban District in all respects and obtain occupancy certificate and building completion certificate and hand over possession to the complainants within four months from the date of payment of remaining consideration i.e. Rs.14,50,000/- plus Rs.25,000/- as deposit for payment of expenses and Rs.25,000/- as deposit for payment towards share money and entrance fee [Total : Rs.15,00,000/- (Rupees Fifteen Lakhs only)]. If the

opponents refused to accept the amount, then complainants should deposit the amount in this Commission under intimation to the opponents and from that date within four months possession should be handed over to the complainants.

4. Opponents are further directed to pay interest @ 21% p.a. on the amount of Rs.16,50,000/- (Rupees Sixteen Lakhs Fifty Thousand only) from the date of filing of complaint i.e. 30/08/2013 till handing over possession of the said flat to the complainants.

5. Opponents are also directed to pay Rs.1,00,000/- (Rupees One Lakh only) as compensation on account of physical and mental harassment suffered by the complainants.

3. The applicants contended in the application that the respondent/accused has not complied the order. Therefore, the present Execution Application is filed.

4. The applicants have prayed that the accused may be dealt and punished according to the provisions of section 27 of the Consumer Protection Act 1986.

5. The present application was verified and the process was issued against the accused u/sec.27 of the Consumer Protection Act 1986. The accused appeared. The plea of the accused is recorded. The accused has pleaded not guilty of the offence alleged against them.

6. The complainants filed their evidence by way of affidavit in examination in chief and the accused took the cross examination of the complainant. The statement of the accused u/sec.313 of Cr.P.C. is recorded. The accused examined himself in their defence and filed their affidavit in examination in chief. The complainant took the cross examination of the accused.

7. Both the sides have argued the present Execution Application. After perusal of the evidence placed on record, impugned order passed in the original consumer complaint and after hearing the final argument the following points are arisen for the determination as mentioned herein under:-

Sr.no.	Points	Answer
1	Whether the accused has complied the order passed in the original consumer complaint no. 349/2013 (CC/15/349)?	Negative
2	Whether the accused is guilty for the offence alleged u/sec.27 of Consumer Protection Act 1986?	Affirmative
3	What order?	As per final order

Point no.1:-

8. The accused no.2-Mr.Samir Khan, partner of M/s.Sterling Construction filed an affidavit of evidence, wherein he contended that there was change in the demarcation of the entire plot. Accordingly, the plan of the said building was changed. Therefore, as per the amended layout, the accused company amended the said plan and proposed to construct the 7 story building accordingly. In the year 2015, the Company purchased the necessary TDR and FSI for the construction of 7 story building and submitted the amended plans to the Corporation. In the year 2022, again the Revised plan was submitted for setting back the area and accordingly, the FIRE NOC was obtained. The Revised plan was submitted for full Commencement Certificate and Occupation Certificate of the said building. The said process for obtaining the document is pending. Therefore, there is no willful disobedience of the order on the part of the accused.

9. It is further contended that the accused is unable to comply the impugned order entirely. It is further contended that there is no willful disobedience of the order on the part of the accused.

10. During the cross examination, the accused replied that the possession of the flat is already given to the applicants, however, no Occupation Certificate is obtained till date. The order is not fully complied with. In the present case, during the final argument the counsel for the accused argued that possession of the flat in question is given to the applicants and due to change of Regulations, there is

delay in obtaining Occupation Certificate from the Authorities. Therefore, there is no willful default.

11. The counsel for the applicants argued that in spite of passing of the impugned order, the accused failed to comply the order. The accused handed over the possession of the alleged flat, however, failed to give lawful possession. The said fact narrates that the accused has willfully and deliberately disobeyed the impugned order passed in the original consumer complaint. Therefore, we come to the conclusion that the accused failed to comply the impugned order. Hence we answer the issue no.1 in negative.

Point no.2:-

12. The accused after obtaining the full consideration amount of the flat, not bothered to complete the construction and obtain the Occupation Certificate and failed to hand over possession of the flat.

13. The defence is taken by the accused u/sec.313 of Cr.P.C. pertaining to the change in Regulation. All NOC and O.C. is not obtained. On the other hand, contrary defence is taken in Evidence that the Accused will complete the building after obtaining Commencement Certificate from the Authority. Hence, the defence cannot be considered. The accused miserably failed to comply the order and the said fact is admitted even in the cross examination of the accused. Therefore, the complainant succeeded to prove that accused has committed the offence punishable u/sec.27 of the Consumer Protection Act 1986 beyond the reasonable doubt. Hence we answer the issue no.2 in affirmative.

Point no.3:-

14. In the issue no.2, it is concluded that the accused is guilty for the offence punishable u/sec.27 of the Consumer Protection Act 1986. We had given an opportunity to the complainant as well as the accused to argue on the point of quantum of punishment.

15. The complainant's counsel argued that the accused deliberately not complied the order till this date. Hence he may be given maximum punishment as prescribed under section 27 of Consumer Protection Act 1986. The accused counsel argued that the compliances of the order was beyond its control. Therefore, there was not deliberate attempt for non-compliance of the order on the part of the accused. Hence the lenient view may be taken while awarding the sentence or penalty.

16. After hearing both the sides, we come to the conclusion that the accused has taken a long time for compliance of the order, as also failed to comply the order till this date. We have gone through section 27 of the Consumer Protection Act 1986, the same is reproduced herein below:-

27. Penalties.—

(1) Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousands rupees but which may extend to ten thousand rupees, or with both:

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.

The accused failed to establish that the compliances of the order was beyond his control. Therefore, we are inclined to pass the following order:-

ORDER

1. Execution application is allowed.
2. The accused no.1-M/s.Sterling Constructions is fined with Rs.10,000/- and the accused nos.2 & 3 being partners of the accused no.1 company are convicted by awarding a sentence of Simple Imprisonment for the period of two years with a fine of Rs.10,000/- each.
3. No order as to costs.
4. Copies of the order be furnished to both the parties free of cost.

[Justice S.P. Tavade]
President

[Vijay C. Premchandani]
Member

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