

IN THE SUPREME COURT OF INDIA**CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO.176 OF 2021**

SATISH K. PRADHAN

...APPELLANT

VERSUS

M/S. MELINKERI CONSTRUCTIONS & ORS.

...RESPONDENTS

ORDER

This appeal under Section 67 of the Consumer Protection Act, 2019 is directed against the judgment and order dated 27.10.2020 passed by the National Consumer Disputes Redressal Commission, New Delhi (“the National Commission” for short) in Consumer Case No.109 of 2010.

The aforesaid Consumer Case was filed by the present appellant seeking reliefs detailed in the prayer clause of the consumer complaint. The matter substantially pertained to disputes arising out of Development Agreement dated 10.04.2003 entered into between the appellant on one part and M/s. Melinkeri Constructions, a Partnership firm of one Mr. Rajeev Melinkeri and Mr. Jitendra Sawant, on the other.

In terms of said Development Agreement, certain obligations were undertaken by the Partnership Firm to be discharged in favour of the appellant. Those obligations as set out in the Synopsis filed by the appellant were: -

- “a) As per the Development Agreement, the redevelopment of the Appellant’s Property was entrusted to Respondent No.1 for a total consideration of Rs.90 lacs, which comprised of:
- i) Monetary consideration of Rs.40 lacs. This was duly given to the Appellant.
 - ii) Rs. 40 lacs worth of consideration towards a residential flat admeasuring about 168.62 sq. mtrs. in another building being constructed by Respondent No.1 at CTS No.9, Mangaldas Road, Munjeri, Pune (hereinafter referred to as “the Mangaldas Road Flat”). Respondent No.1 was also to bear the cost of stamp duty and registration charges in relation thereto. This was to be handed over by 31.03.2004.
 - iii) Lastly, Rs.10 lacs worth of consideration towards the cost of construction of a flat on the topmost floor of the Prabhat Road Property, as per specifications detailed in Annexure A to the Development Agreement, which space was retained by the Appellant. This was to be completed by 09.06.2005 (“the Prabhat Road Flat”).
- b) Further, as per the Development Agreement, Respondent No.1 was to provide free of cost alternative accommodation in the same locality to the Appellant. This accommodation was to be to the complete satisfaction of the Appellant and the expenses in respect thereto such as for repairs, etc. were to be fully borne by Respondent No.1.
- c) Respondent No.1 had at the time of entering into the Development Agreement verbally and equivocally committed to providing Dr. Mohan Agashe’s flat as temporary accommodation. Instead, they provided an unsatisfactory accommodation for only a temporary period at Aneya Apartments and that too after several reminders. The Appellant had to incur major expenditure to make the provided temporary accommodation livable such as adding basic cabinets and/or simple cupboards, etc. When informed of this, Respondent No.1 agreed to share half the costs thereof. The Appellant spent Rs.4 lacs on the temporary accommodation but Respondent No.1 never provided half of this amount as agreed.
- d) Furthermore, Respondent No.1 undertook the responsibility to obtain the necessary approvals for the building plan for the Prabhat Road Property from the Pune Municipal Corporation by 09.06.2003.”

It is accepted by the appellant that the monetary consideration has been received in full. The appellant has also received possession of an apartment at CTS No.9, Mangaldas Road, Munjeri, Pune, as agreed to between the parties. The grievance however is with respect to the constructed portion which was to be made available to the appellant on the top floor of the newly constructed building at Prabhat Road. According to the appellant, instead of an apartment admeasuring 165 sq. mtrs (3 BHK), which was promised, what has been made available is to the extent of 125 sq. mtrs. only.

Alleging that there was deficiency in service on part of respondent No.1 *i.e.* the Partnership Firm in discharging its obligation in terms of the arrangement arrived at between the parties, the aforesaid Consumer Case was preferred by the appellant.

While the matter was pending before the National Commission, first partner namely, Mr. Rajiv Melinkeri expired. An application for substitution of the legal representatives of said deceased partner was filed, and the wife and two sons of the deceased were brought on record. Though the heirs of the deceased were served, they chose not to enter appearance and did not contest the aforestated Consumer Case.

The other partner Mr. Jitendra Sawant sought discharge from the proceedings submitting that by virtue of Retirement Deed dated 12.09.2007, said Mr. Sawant had retired from the partnership firm and all the liabilities of existing firm were taken over by the reconstituted firm.

By its judgment and order dated 27.10.2020, the Consumer Case was dismissed by the National Commission observing *inter alia* that the grievances raised by the appellant were more in the nature of anguish with a trusted friend rather than deficiencies arising from an agreement between two parties amenable to evidence based adjudication.

Being aggrieved, the appellant is before this Court in appeal.

Mr. Somiran Sharma, learned Advocate appearing for the appellant submits that the only grievance was with respect to the extent of constructed portion that was to be made over on the top floor of the building. Mr. Sharma submits that though the understanding was that the appellant would be given constructed area of 165 sq. mtrs. (3 BHK) on the top floor, what was constructed on the 4th floor was an extent of 125 sq. mtrs. and it was represented to the appellant that if the requisite permission was given by the authorities, 5th floor would also be constructed and that in addition to the extent of 125 sq. mtrs. on the 4th floor, the extent of 165 sq. mtrs. (3 BHK) on the 5th floor would also be given to the appellant. It is further submitted that the 5th floor has not been constructed at all and that even with respect to the extent of 125 sq. mtrs. of constructed portion on the 4th floor, no completion certificate has been obtained by the Partnership Firm.

Mr. Ajit Bhasme, learned Senior Advocate appearing for Mr. Jitendra Sawant, reiterated the submission that having retired from the Partnership Firm, said Mr. Sawant be discharged from the present proceedings.

The submission advanced by Mr. Ajit Bhasme, learned Senior Advocate is countered by Mr. Somiran Sharma placing reliance on Section 32 of the Indian Partnership Act, 1932. In his submission, retirement by itself would not absolve said Mr. Sawant of the liabilities undertaken by the Firm in the absence of any clear-cut understanding or agreement between the retiring partner and the appellant.

Though the heirs of Mr. Rajeev Meliinkeri were served through substituted service, none has entered appearance on their behalf.

Without going into any of the rival contentions adverted to hereinabove, in our view, considering the nature of controversy and the issues raised, the proper course was to file a civil suit rather than a consumer complaint before the Forum under the Consumer Protection Act.

The questions raised by either parties would require detailed analysis of factual aspects of the matter which could be ideally undertaken in a Civil Suit instead of a summary remedy under the Consumer Protection Act.

We therefore grant liberty to the appellant to initiate an action before a competent civil court seeking redressal of the issues raised by him. As and when such action is initiated, the matter shall be considered by the Civil Court without being influenced by any of the observations made by the National Commission in its judgment and order presently under challenge. Further, the appellant shall be entitled to have the period spent in prosecuting Consumer Case No.109 of 2010 before the National Commission to be set-off in case the issue of limitation in initiating such action arises.

Considering the fact that the matter has been pending for a considerable length of time, we direct the civil court to consider disposing of such proceedings, if filed within 8 weeks from today, as early as possible and preferably within a year of the filing of the suit. All questions are left open to be decided in such civil proceedings.

With these observations, the instant civil appeal stands disposed of, without any order as to costs.

.....J.
(UDAY UMESH LALIT)

.....J.
(S. RAVINDRA BHAT)

.....J.
(BELA M. TRIVEDI)

NEW DELHI,
SEPTEMBER 15, 2021

ITEM NO.9 COURT NO.2 SECTION XVII-A
(HEARING THROUGH VIDEO CONFERENCING)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.176/2021

SATISH K. PRADHAN

Appellant(s)

VERSUS

M/s. MELINKERI CONSTRUCTIONS & ORS.

Respondent(s)

(IA No.10491/2021 - FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT; and, IA No.10493/2021 - FOR APPROPRIATE ORDERS/DIRECTIONS)

Date : 15-09-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Appellant(s) Mr. Somiran Sharma, AOR

For Respondent(s) Mr. Ajit Bhasme, Sr. Adv.
Mr. Sanjay Kumar Visen, AOR
Mr. Kousik Ghosh, Adv.
Ms. Adira A. Nair, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The Civil Appeal is disposed of, in terms of the Signed Order placed on the file.

Pending applications, if any, also stand disposed of.

(MUKESH NASA)
COURT MASTER

(VIRENDER SINGH)
BRANCH OFFICER