
(2014) 10 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

Emmar Mgf Land Ltd

APPELLANT

Vs

Akash Rathke S/O Bhim Rathke

RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Citation : (2014) 10 NCDRC CK 0029

Hon'ble Judges : K.S.CHAUDHARI J.

Advocate : ANKIT MEHTA , RAHUL SHARMA , JITENDER RATTA

Judgement

1. THESE appeals involve common question of law; hence, decided by one order.
2. THE appellant has filed Appeal No. 194 of 2014 Emaar MGF Land Ltd. Vs. Akash Rathke, Appeal No. 243 of 2014 Emaar MGF Land Ltd. Vs. Suharsh Mittal, Appeal No. 244 of 2014 Emaar MGF Land Ltd. Vs. Raj Garg, Appeal No. 245 of 2014 Emaar MGF Land Ltd. Vs. Surendra Kumar Mittal and Anr. and Appeal No. 246 of 2014 Emaar MGF Land Ltd. Vs. Suharsh Mittal and Anr. against the order dated 10.12.2013 passed by the Punjab State Consumer Disputes Redressal Commission, Chandigarh (in short, "the State Commission") in Complaint Case No. 14/2011 Akash Rathke Vs. M/s. Emmar MGF Land Pvt. Ltd., Complaint Case No. 103/2011 Suharsh Mittal Vs. M/s. Emmar MGF Land Pvt. Ltd., Complaint Case No. 104/2011 Raj Garg Vs. M/s. Emmar MGF Land Pvt. Ltd., Complaint Case No. 105/2014 Surender Kumar Mittal and Anr. Vs. M/s. Emmar MGF Land Pvt. Ltd. and Complaint Case No. 106/2011 Suharsh Mittal and Anr. Vs. M/s. Emmar MGF Land Pvt. Ltd. by which, while allowing complaint, OP was directed to refund deposited amount with interest and further awarded compensation of Rs.2,00,000/- and litigation expenses.
3. BRIEF facts of the case are that complainant/respondent booked 1 -2 flats with OP/appellant and complainants were allotted specific flat number in the project to be constructed by OP. Complainants made part payment and OP was to handover possession of the flat within 36 months from the date of allotment. OP even did not start construction and further demanded some money which was also paid. Even after receipt of payment, no construction took place on the site.

Alleging deficiency on the part of OP, complainant filed complaint before State Commission. OP resisted complaint and submitted that complainant does not fall within purview of consumer under the Consumer Protection Act. It was further submitted that disputes were to be referred to Arbitrator under Arbitration and Conciliation Act, 1996 and in case of delay in handing over possession; OP was liable to pay to the allottee Rs.5/ - per sq. ft. for delay in construction and prayed for dismissal of complaint. Learned State Commission after hearing both the parties allowed complaint and directed OP to refund deposited amount with 12% p.a. interest and further awarded compensation and litigation cost. OP filed appeals along with application for condonation of delay of 19 days in all appeals except Appeal No. 194 of 2014. Heard learned Counsel for the parties finally at admission stage and perused record.

4. AS far application for condonation of delay is concerned, learned Counsel for the appellant submitted that impugned order was inadvertently misplaced and when Mr. Sachin Kapur took charge of the matter, appeal was filed after completing records and in this process, delay occurred which may be condoned. As there is delay of only 19 days in filing appeals on account of misplacement of the order, I deem it appropriate to condone the delay subject to cost. Hence, application for condonation of delay is allowed subject to payment of cost of Rs.5,000/ - to respondent in each case and delay stands condoned.

5. LEARNED Counsel for the appellant submitted that learned State Commission has not considered objection regarding the maintainability of complaint before State Commission and in such circumstances, impugned order be set aside and matter may be remanded back to learned State Commission for disposal of complaint afresh after considering all the objections taken in written statement. On the other hand, learned Counsel for the respondent submitted that objections taken by appellants were superfluous and were not tenable, in such circumstances, matter does not require remand and appeal may be disposed of on merits.

6. PERUSAL of written statement filed by OP reveals that in Complaint No. 14/2011, OP specifically mentioned that complainant booked two units in the project and complainant was mere speculator and does not fall within definition of consumer under the C.P. Act. Similar objections were taken by OP in other complaints in which it was specifically mentioned that complainant is an investor and speculator and has invested in five properties of the OP through a broker/property dealer C.P. Sharma and sole motive of the complainant was to earn profit by speculation; hence, complaints were not maintainable. Learned State Commission has also referred this objection in the judgment, but has not considered this objection. This objection goes to the root of the complaint and if OP establishes this fact that complainant did not fall within purview of consumer under C.P. Act then complaint was not maintainable. Learned State Commission was under an obligation to decide this objection and only after deciding this objection against OP, should have proceeded further and allowed complaint.

7. LEARNED Counsel for the respondent admits that this objection has not been dealt with by the learned State Commission, but as this objection was superfluous, matter may not be remanded back. This argument is devoid of force because this objection goes to the root of the complaint and without deciding this objection, learned State Commission should not have proceeded further and in such circumstances, impugned order is liable to set aside and matter has to be remanded back to learned State Commission for deciding complaint afresh after dealing this objection as well other objections taken in the complaint regarding maintainability of complaint.

8. CONSEQUENTLY, Appeal No. 194 of 2014 Emaar MGF Land Ltd. Vs. Akash Rathke, Appeal No. 243 of 2014 Emaar MGF Land Ltd. Vs. Suharsh Mittal, Appeal No. 244 of 2014 Emaar MGF Land Ltd. Vs. Raj Garg, Appeal No. 245 of 2014 Emaar MGF Land Ltd. Vs. Surendra Kumar Mittal and Anr. and Appeal No. 246 of 2014 Emaar MGF Land Ltd. Vs. Suharsh Mittal and Anr. filed by the appellants are allowed and impugned order dated 10.12.2013 passed by the Punjab State Consumer Disputes Redressal Commission, Chandigarh in Complaint Case No. 14/2011 Akash Rathke Vs. M/s. Emaar MGF Land Pvt. Ltd., Complaint Case No. 103/2011 Suharsh Mittal Vs. M/s. Emaar MGF Land Pvt. Ltd., Complaint Case No. 104/2011 Raj Garg Vs. M/s. Emaar MGF Land Pvt. Ltd., Complaint Case No. 105/2014 Surender Kumar Mittal and Anr. Vs. M/s. Emaar MGF Land Pvt. Ltd. and Complaint Case No. 106/2011 Suharsh Mittal and Anr. Vs. M/s. Emaar MGF Land Pvt. Ltd. are set aside and matters are remanded back to learned State Commission to decide the complaints afresh after considering all the objections in the written statement and after giving an opportunity of being heard to the parties.

9. PARTIES are directed to appear before the State Commission on 4.12.2014

10. AMOUNT deposited by the appellant in pursuance to directions of this Commission may be returned back to the appellant.