
(2014) 04 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

M/S. S.S. Builder And Contractors

APPELLANT

Vs

Mukund M. Sarang

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Citation : 2014 0 NCDRC 216 : 2014 2 CPJ 683

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : UDAY B.WAVIKAR , S.K.SHARMA , S.B.PRABHAVALKAR

Judgement

1. THESE appeals have been filed by the appellant against the order dated 05.03.2011 passed by the Maharashtra State Consumer Disputes Redressal Commission, Mumbai (in short, "the State Commission ") in Consumer Complaint No. 345 of 2000 - Mukund M. Sarang & Ors. Vs. M/s. S.S. Builder & Contractors ShriSuhasGangadharRahurkar, Consumer Complaint No. 346 of 2000 - RohiniP. Mether& Ors. Vs. M/s. S.S. Builder and Contractors ShriSuhasGangadharRahurkarand DeepaR. Malandhar& Ors. Vs. M/s. S.S. Builder & Contractors Shri Suhas Gangadhar Rahurkar, and Consumer Complaint No. 227 of 2001 - P.Y. Shahastrabudhe & Ors. Vs. M/s. S.S. Builder & Contractors Shri Suhas Gangadhar Rahurkar, Consumer Complaint No. 228 of 2001 - S.S. Baing & Ors. Vs. M/s. S.S. Builder & Contractors Shri Suhas Gangadhar Rahurkar and Consumer Complaint No. 229 of 2001 - P.D. Modak & Ors. Vs. M/s. S.S. Builder & Contractors Shri Suhas Gangadhar Rahurkar by which, order dated 20.09.2010 passed by learned State Commission was corrected. All these appeals arise out of common order of the State Commission and involve common question; hence, decided by single order.

2. BRIEF facts of the cases are that Complainants/respondents filed complaints before learned State Commission with a prayer to refund money paid for purchase of flats along with interest and damages. Learned State Commission vide order dated 20.9.2010 allowed complaints as under: ""ORDER COMPLAINT NO.345/2000 1. Complaint is partially allowed. 2. Opponent no.1 shall pay Rs.1,75,000/- to the complainant from 15/12/1998 till its realization. 3. Prayer

in respect of damages of Rs.5 lakhs is hereby rejected. 4. Opponent no.1 shall pay Rs.5000/- to the complainant by way of cost of complaint. 5. Complaint is dismissed as against opponent nos.2&3. 6. Copies of the order be furnished to the parties. COMPLAINT NO.346/2000 1. Complaint is partially allowed. 2. Opponent no.1 shall pay Rs.2,00,000/- to the complainant from 15/12/1998 till its realization. 3. Prayer in respect of damages of Rs.5 lakhs is hereby rejected. 4. Opponent no.1 shall pay Rs.5000/- to the complainant by way of cost of complaint. 5. Complaint is dismissed as against opponent nos.2&3. 7. Copies of the order be furnished to the parties. COMPLAINT NO.347/2000 1. Complaint is partially allowed. 2. Opponent no.1 shall pay Rs.1,60,000/- to the complainant from 15/12/1998 till its realization. 3. Prayer in respect of damages of Rs.5 lakhs is hereby rejected. 4. Opponent no.1 shall pay Rs.5000/- to the complainant by way of cost of complaint. 5. Complaint is dismissed as against opponent nos.2&3. 6. Copies of the order be furnished to the parties. COMPLAINT NO.227to229/2000 1. Complaint is partially allowed. 2. Opponent no.1 shall pay following amounts to the complainants from 05/12/1998 till its realization. Mr.P.Y.Sahastrabudhe ...Rs.2,70,000/- - Mrs.M.M.Patki ...Rs.2,15,000/- - SagarTerrace Co -op.Society ...Rs.6,08,000/- 3. Prayer in respect of damages of Rs.5 lakhs is hereby rejected. 4. Opponent no.1 shall pay Rs.5000/- to the complainant by way of cost of complaint. 5. Complaint is dismissed as against opponent nos.2&3 "".

Later on, by impugned order dated 5.3.2011, corrections were made in the order dated 20.9.2010 and interest part was added in the order against which, these appeals have been filed.

3. HEARD learned Counsel for the parties finally at admission stage and perused record.

4. LEARNED Counsel for the appellants submitted that learned State Commission had no power to review its order and in such circumstances, impugned order reviewing the earlier order is contrary to law; hence, appeals be allowed and impugned order be set aside. On the other hand, learned Counsel for the respondents submitted that impugned order is not a review order, but only necessary corrections have been made which were only typographical errors in the earlier order and further submitted that as impugned order is a consent order appeals are not maintainable; hence, appeals be dismissed. First question to be decided is whether impugned order amounts to review of the order or not. Admittedly, final order dated 20.09.2010 does not contain directions for payment of amount with interest, though; complainants were held entitled to interest @ 18% p.a. By impugned order interest was inserted in the main order. Learned Counsel for the appellants submits that it amounts to review, whereas learned Counsel for the respondents submits that impugned order does not come within the purview of review, but it was only a correction of typographical error.

5. ADDITION of interest by impugned order in the amount awarded by order dated 20.9.2010, though; observed in paragraph 19 of the order dated

20.9.2010 that complainants are entitled to interest cannot be termed as typographical mistake and apparently it amounts to reviewing the earlier order. Hon "ble Apex Court in (2011) 9 SCC 541 - Rajeev Hitendra Pathak and Others Vs. AchyutKashinath Karekar and Anr. has observed that District Forum and State Commission have not been given any power of review its own order and in such circumstances, impugned order is liable to be set aside. Even if impugned order is treated as order under Section 152 CPC, we are of the view that learned State Commission had no power to rectify its mistakes under Section 152 CPC and impugned order is liable to be set aside.

6. LEARNED Counsel for the respondents submitted that as impugned order is a consent order, no appeal lies against the consent order. In support of his contentions he has placed reliance on decisions of this Commission rendered in R.P. No. 2885 of 2006 - NingappaHanamanppa Kador Vs. Hindustan Motors Ltd., R.P. No. 1645 of 2008 - State Bank of India Vs. Smt. Sita Devi and R.P. No. 3862 of 2010 - M/s. Sunny Brooks Vs. AparajithaBhandary & Anr. The aforesaid judgments are not applicable to the facts and circumstances of the present case. In the aforesaid cases, matters were disposed of on the basis of consent of the parties, whereas in the present case Counsel for the OP merely submitted before State Commission that amendments suggested by complainant is required which does not amount to consent for amendment in the order. Even if it is presumed that impugned order was consent order this order is liable to be set aside as State Commission had no power to review its order and merely by consent an authority cannot pass any order which that authority does not have power to pass as jurisdiction to review its order has not been conferred on State Commission.

7. CONSEQUENTLY , appeals filed by the appellants are allowed and impugned order dated 5.3.2011 passed by learned State Commission in Consumer Complaint No. 345 of 2000 - Mukund M. Sarang & Ors. Vs. M/s. S.S. Builder & Contractors ShriSuhasGangadharRahurkar, Consumer Complaint No. 346 of 2000 - RohiniP. Meher& Ors. Vs. M/s. S.S. Builder & Contractors ShriSuhasGangadharRahurkarand DeepaR. Malandhar& Ors. Vs. M/s. S.S. Builder & Contractors Shri Suhas Gangadhar Rahurkar, and Consumer Complaint No. 227 of 2001 - P.Y. Shahastrabudhe & Ors. Vs. M/s. S.S. Builder & Contractors Shri Suhas Gangadhar Rahurkar, Consumer Complaint No. 228 of 2001 - S.S. Baing & Ors. Vs. M/s. S.S. Builder & Contractors Shri Suhas Gangadhar Rahurkar and Consumer Complaint No. 229 of 2001 - P.D. Modak & Ors. Vs. M/s. S.S. Builder & Contractors Shri Suhas Gangadhar Rahurkar are set aside with liberty to complainants/respondents to challenge the order dated 20.09.2010 in which interest has not been allowed.