**STATE CONSUMER DISPUTES REDRESSAL COMMISSION**

**WEST BENGAL**

**FIRST APPEAL NO. SC/19/A/655/2018**

M/s. Mira Construction & Ors. .....Appellant(s)
PRESENT ADDRESS - 41/4, Chetla Road, P.S. - Alipore, Kolkata - 700 027.,WEST BENGAL.
Sri Biswajit Das
PRESENT ADDRESS - S/o Lt. Khagendra Nath Das, 41/4, Chetla Road, P.S. - Alipore, Kolkata - 700 027.,WEST BENGAL.
Sri Tapan Kr. Gayen
PRESENT ADDRESS - S/o Lt. Sudhir Krishna Gayen, 39B, Beltala Road, P.S.- Ballygunge, Kolkata - 700 020.,WEST BENGAL.

Versus

Sri Prabir Kr. Chatterjee .....Respondent(s)
PRESENT ADDRESS - S/o Provat Chandra Chatterjee, presently at Qtr. no. D-70, Jagruti Vihar, MCL HQ Complex, Burla, Sambalpur(Odisha), Pin -768 020.,WEST BENGAL.

**BEFORE:**

**HON'BLE MRS. SOMA BHATTACHARJEE , PRESIDING MEMBER**

**HON'BLE MR. ANANDA KUMAR TIWARI , JUDICIAL MEMBER**

**FOR THE APPELLANT:** Mr. Ved Sharma (Advocate)

**FOR THE RESPONDENT:** NEMO

**DATED: 10/09/2026**

**ORDER**

HON'BLE ANANDA KUMAR TIWARI

(JUDICIAL MEMBER)

# Final Order/Judgement

| Date of Filing | Date of hearing | Date of Judgment |
|---|---|---|
| 13/07/2018 | 17/08/2026 | 10/09/2026 |

The Appellants filed this appeal u/s 15 of the Consumer Protection Act, 1986 (hereinafter referred to as Act of 2019) impeaching the impugned judgment and order dt. 27/10/2016 passed by Hon'ble District Consumer Disputes Redressal Commission, Kolkata, Unit-I(hereinafter referred to as the Hon'ble District Commission) in complaint case No CC/399/2012. It is the case of the Appellants that the Appellant No 1 is a partnership firm and the Appellant Nos 2 & 3 is the partners of the Appellant No 1. It is stated that the Respondent being the complainant filed a complaint before Hon'ble District Commission stating that the Respondent along with other co-owners of the property at premises No 26/1B, Sabji Bagan Lane, PS-Chetla, Kolkata-700027 entered into a development agreement with the Appellants in terms of which the Appellants after obtaining sanction plan from KMC carried on construction works and after obtaining completion certificate executed and registered deed of conveyances in favour of various purchasers. It was alleged by the Respondents that in terms of said settlement agreement, the Respondent and his brother namely Subir Kumar Chatterjee were jointly entitled to get a self-contained flat measuring about 300 Sq Ft super built up area on the first floor of the building but the Appellants failed to handover the possession of said Flat to the Respondent and his brother.

It is stated that the Appellants contested the case before the Hon'ble District Commission by filing written version and after contested hearing Hon'ble District Commission passed the impugned order directing the Appellants to provide a 300 Sq Ft flat super built up area in the first floor of the building as well as compensation and litigation cost.

Being aggrieved by and dissatisfied with the order passed by Hon'ble District Commission the Appellants preferred this appeal on the grounds that the impugned order is bad in fact and law, liable to be set aside and further that Hon'ble District Commission failed to appreciate the factual aspect and merit of the case and misdirected itself to have passed the impugned order. The further ground for preferring the appeal by the Appellant is that Hon'ble District Commission failed to appreciate the fact that the Respondent was one of the co-owners of the property in dispute amongst others, who entered into joint venture agreement with the Appellants by putting their signatures but supressing all these facts, the Respondent filed the complaint under Section 12 of the Act and as such the case suffers from non-joinder and mis-joinder of parties and further that though the Respondent was entitled to self-contained Flat along with his brother as evident from the Development agreement but he filed the case singly. It is stated that Hon'ble District Commission also failed to appreciate the fact that the Respondent is not a consumer and the relation in between the Appellant and the Respondent is that of Principal and Agent not of service provider and the matter was to be adjudicated by the Civil Court.

The further ground for preferring the Appeal is that Hon'ble District Commission failed to consider that the Respondent filed the complaint supressing the fact that he and his brother put their signature in a supplementary agreement dated 17/07/2006 wherein they gave consent to the Appellants to sell the flat in question to any intending purchaser on condition to hand over the consideration amount to the Respondent andhis brother and further that in terms of the development agreement in case of any dispute, the same falls within the ambit of Arbitration and Conciliation Act 1996 and as such the Commission had no jurisdiction to pass any order.

Contending the above and other grounds as stated in the Memorandum of appeal the Appellants prayed to set aside the impugned order dt. 27/10/2016 passed by Hon'ble District Commission in CC/399/12.

After filing of the appeal notice was issued to the Respondents. The Appellants filed BNA but the Respondent failed to appear and also did not file BNA. In view of the same, Ld Advocate for the Appellants was heard at length and the record is taken up for passing order on merit. We have gone through the copies of document filed alongwith the Memorandum of Appeal as well as the order passed by Hon'ble District Commission.

We have also gone through the copy of complaint petition filed by the complainant as well as through the judgement passed by Hon'ble District Commission. We find that Hon'ble District Commission discussed the merit of the case and also mentioned the submission of Ld Advocate for the Opposite parties (Appellants herein) that "Being one of the owners of the building the complainant can take the possession of the Flat at any moment and there is no laches on the part of the Ops in not providing the Flat to the complainants".

Based on this and other facts being the part of the judgment, Hon'ble District Commission passed the order, which is under challenge at the instance of the Appellants. At the time of argument, Ld Advocate for the Appellantsargued on the points of non-joinder and mis-joinder of the parties as well as on the point of the arbitration clause in the development agreement.

Consumer Protection Act is a special statute enacted by Parliament for the specific purpose of providing a speedy remedy to consumers before the Commissions. A Consumer Disputes Redressal Commission having no power like a Civil Court cannot appoint an arbitrator and as such there is no question to deal with arbitration clause in a matter related with consumer disputes.

In the matter of **M/S Emaar MGF Land Ltd, Appellant Vs Aftab Singh, Respondent** reported in **2019 (12) SCC 751**, **Hon'ble Supreme Court**while dealing with the order passed by three Bench of **Hon'ble NCDRC** presided by Hon'ble President NCDRC observed that"The Consumer Protection Act, 1986 has been enacted to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matter connected therewith".

**Hon'ble Supreme Court** further observed that "This court had occasion to consider the provisions of Section 34 of Arbitration Act, 1940 in reference to the Consumer Protection Act,

1986 in **Fair Air Engineering Pvt Ltd and another Vs N.K. Modi, (1996) 6 SCC 385**. This Court in the said case held that consumer fora is a judicial authority. In the above, the appellant had entered into a contract with the respondent to carry out installation of a centrally air-conditioned plant in the residential house of the respondent. The respondent filed a complaint before the State Commission under the Consumer Protection Act, 1986 which proceedings were stayed by the State Commission and it relegated the parties to arbitration proceedings. The NCDRC held that the proceedings before the Consumer fora is not a legal proceedings and Commission is not a judicial authority, therefore, Section 34 of the Arbitration Act, 1940 is not available to stay the proceedings. The said order of NCDRC was challenged in this Court. This Court reversed the order of the State Commission and remitted the matter to the State Commission to decide the matter on merits according to law. This Court held that the Parliament was well aware of the Arbitration Act, 1940 when the Consumer Protection Act was enacted providing for additional remedy. In paragraphs 15 and 16 following has been laid down:

> "15. Accordingly, it must be held that the provisions of the Act are to be construed widely to give effect to the object and purpose of the Act. It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words "in derogation of the provisions of any other law for the time being in force" would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the Contract Act 1872 and the consequential remedy available under Section 9 of the Code of Civil Procedure, i.e., to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy.
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> 16. It would, therefore, be clear that the legislature intended to provide a remedy in addition to the consentient arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of Code of the Civil Procedure. Thereby, as seen, Section 34 of the Act does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under the Act. It is a matter of discretion. Considered from this perspective, we hold that though the District Forum, State Commission and National Commission are judicial authorities, for the purpose of Section 34 of the Arbitration Act, in view of the object of the Act and by operation of Section 3 thereof, we are of the considered view that it would be appropriate that these forums created under the Act are at liberty to proceed with the matters in accordance with the provisions of the Act rather than relegating the parties to an arbitration proceedings pursuant to a contract entered into between the parties. The reason is that the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless the forums on their own and on the peculiar facts and circumstances of a particular case come to the conclusion that the appropriate forum for adjudication of the disputes would be otherwise those given in the Act."

**Hon'ble Supreme Court** further observed that "This Court had occasion to consider the provisions of Consumer Protection Act as well as the Arbitration Act, 1996. In **Skypak Couriers Ltd Vs Tata Chemicals, (2000) 5 SCC 294**, this Court laid down the following:

> "Even if there exists an arbitration clause in an agreement and a complaint is made by the consumer, in relation to a certain deficiency of service, then the existence of an arbitration clause will not be a bar to the entertainment of the complaint by the Redressal Agency, constituted under the Consumer Protection Act, since the remedy provided under the Act is in addition to the provisions of any other law for the time being in force."

**Hon'ble Supreme Court** further observed that "This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above".

In the light of the decision discussed above, we find that there is no merit in the case of the Appellants so far the development agreement is related with the arbitration clause.

Another issue raised by the Appellantsis the issue of non-joinder of necessary parties. It is submitted that though the Development agreement was entered and executed in between the Respondent and his brothers along with other co-owners and the Appellants but the Respondent did not implead his brother Subir Kumar Chatterjee as a complainant and the case is bad for non-joinder of necessary parties. It is not clear before us whether the question of Non-joinder of parties was raised by the Appellants before Hon'ble District Commission or not. The Appellantsannexed the copy of the complaint petition, copies of the development agreement and one supplementary agreement as well as copy of the Advocate notice sent to them by the Complainant therein. The copy of the Advocate notice reflects that Advocate for the complainant mentioned the name of the complaint and his brother, who are stated to be jointly entitled to the said flat in question. It is fact that the Respondent did not mention the name of his

brother as one of the complainant. The general rule is that no suit shall be defeated by reason of non-joinder of parties, and the Court may, in every suit, deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. There is an exception to the general rule i.e. the Court will refrain from passing a decree which would be ineffective and infructuous.

The consumer Protection Act is a beneficent statute enacted for the better protection of the interest of the consumers and it is not to be shackled with the technicalities of civil procedure. The proceeding under the Act is simple and summary in nature and only a few provisions of the Civil Procedure Code is applicable as provided in the Act. The concept of the dismissal of a complaint because of a non-joinder of what may at the highest be a proper party would to our mind be alien to the spirit of this Act. This is more so when the objection with regard to the party was not raised before the District Forum. It is well settled that even when attracted the plea of non-joinder must be raised at the earliest opportunity and the party raising the plea must specifically state the person who should or ought to be impleaded. If such an objection of non-joinder is not raised at any early stage in the eye of law, it is also deemed to have been waived.

The consumer protection act 1986 has been enacted to provide adequate relief to the consumer and in the process of such relief technicalities should not stand as obstruction. It is quite apparent that the complainant and his brother were signatories to the development agreement and Hon'ble District Commission passed the order after making observation. Here we are dealing with the case of a consumer, who after entering into development agreement is denied the possession of the Flat which he is entitled to joint possession with his brother. In the impugned judgment we find that Hon'ble District Commission observed that it was agreed in the development agreement that the complainant and his brother will be provided with a flat measuring 300 Sq Ft super built up area on the 1st Floor of the premises.

We further find that the Respondent herein filed a Revision petition being No 1979 of 2019 before Hon'ble NCDRC challenging the interim order dated 12/07/2019 passed by this Commission, in which this Commission condoned the delay of 594 days. Vide order dated 07/07/2023, Hon'ble NCDRC set aside the order of condoning delay and directed this Commission to decide the matter afresh, which was subsequently decided. We find that Hon'ble NCDRC in said order observed that the Appellants herein contended before Hon'ble NCDRC that the Respondent herein pressurized the Appellant for execution of registering the deed of conveyance in his favour. However we find that this point was never agitated before Hon'ble District Commission and also in the Memo of Appeal. We further

find that Hon'ble NCDRC also observed in said order that an execution application was filed by the Respondent and his brother. In view of the same it is clear that the execution application is pending before Hon'ble District Commission, which is filed by the complainant and his brother.

One more point raised by Ld Advocate for the Appellants is that Hon'ble District Commission failed to consider that in a supplementary agreement dated 17/07/2006, which was executed in between the parties, where the Respondent and his brother gave consent to the Appellants for selling their flat to any intending purchaser. A copy of said agreement is also annexed with the Memo of Appeal. We have gone through the same. Upon perusal of the written version we fail to find any mention of this fact. Even for the sake of argument if it is accepted that the Complainant and his brother executed such agreement on 17/02/2006, it was not acted upon and as such the complainant filed the case on the basis of the development agreement, the terms of which was also not complied by the Appellants.

In view of the discussion as aforesaid and the facts and circumstances of the case in the light of decision above, we are of the opinion that there is no merit in the case of the Appellant and as such there is no cogent reason to interfere with the order dated 27/10/2016 passed by Hon'ble District Commission in CC/399/2012.

Hence it is

**ORDERED**

That the Appeal bearing No A/655/2018 is hereby dismissed on merit without any order as to cost. The order passed by Hon'ble District Consumer Disputes Redressal Commission, Kolkata, Unit-I in CC/399/2012 is hereby affirmed.

A copy of this order be provided to the parties free of cost as mandated by Consumer Protection Act, 1986.

The order be uploaded forthwith on the website of Commission for perusal of the parties.

A copy of this order be also forwarded to Hon'ble District Consumer Disputes Redressal Commission, Kolkata, Unit-I for record and necessary information and the File be consigned to record room along with the copy of this order.

Pending application(s), if any, stands disposed of.

Dictated and corrected by me

ANANDA KUMAR TIWARI

(JUDICIAL MEMBER)

Typed By me

Kamalika Ganguly

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**SOMA BHATTACHARJEE**

**PRESIDING MEMBER**

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**ANANDA KUMAR TIWARI**

**JUDICIAL MEMBER**