

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 612 OF 2021

(Against the Order dated 12/07/2021 in Complaint No. 290/2018 of the State Commission
Uttar Pradesh)

1. GOVIND NARAIN GUPTA

S/O SHRI S.K. GUPTA, HOUSE NO. E-4146, RAJAJI
PURAM

LUCKNOW-226017

.....Appellant(s)

Versus

1. SUDHAKAR NATH

S/O JAGDISH PRASAD GALI NO. 3, KEDAR VIHAR
COLONY, GOUSHALA ROAD, BALAGANJ CHOWK

LUCKNOW-226003

UTTAR PRADESH

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

HON'BLE DR. SADHNA SHANKER, MEMBER

FOR THE APPELLANT : MS. NAMRATA CHANDORKAR, ADVOCATE ON
AUTHORITY FROM MR. RITESH KHARE, ADVOCATE

FOR THE RESPONDENT : EX PARTE

Dated : 08 April 2024

ORDER

PER SUBHASH CHANDRA

This First Appeal under Section 51 of the Consumer Protection Act, 2019 (for short "the Act") assails the orders dated 10.09.2020 and 12.07.2021 of the State Consumer Disputes Redressal Commission, Uttar Pradesh (for short "the State Commission") in Consumer Complaint No.290 of 2018 and Review Application No.6 of 2020.

2. The brief facts of the case are that the Appellant had purchased a plot of land bearing Plot No.13/7028 situated in Rajajipuram, Lucknow admeasuring 269.70sq.mtr. from one Radhemohan S/o Ramdev Chaudhary for a sale consideration of Rs.55 Lakhs vide Registered Sale Deed before the Sub Registrar, Lucknow on 10.10.2013. The Appellant and the Respondent entered into a Builder's Buyers Agreement on 09.09.2014., as per which the Respondent undertook to construct a residential complex comprising of ground floor plus three floors by making his own investment in return for which there was an agreement of 50% share in each of the floors between the parties. As per Clause 12 of the said Agreement, the Respondent agreed to complete the construction within 24 months. On account of various circumstances, the Appellant filed a civil suit before the court of Civil Judge, Senior Division Lucknow bearing Suit No.2962 of 2015 for Mandatory and Permanent Injunction against the Respondent on 02.12.2015. According to the Appellant, on 05.07.2016, the

Respondent undertook before the Civil Judge in the civil suit that in view of an Arbitration Clause in the Agreement between the Appellant and the Respondent, the arbitration proceedings should have been invoked. The Civil Suit was accordingly disposed of on 05.07.2016 on this ground with the liberty to the Appellant to approach the competent court for arbitration. In view of the persistence of certain differences between the Appellant and the Respondent, the Appellant preferred Consumer Complaint No.290 of 2018 before the State Commission on 27.08.2018 seeking various directions and documents from the Respondent. By way of the impugned order dated 10.09.2020, the State Commission dismissed the Complaint on the ground that Civil Suit dated 09.09.2014 was pending before the Civil Court, although, Counsel for the Appellant submitted that this Suit already stood disposed of. Thereafter, Review Application No.6 of 2020 was filed before the State Commission on 14.10.2020 which was also dismissed on the ground that a Civil Suit was pending before the Civil Court. The Appellant is before this Commission challenging the impugned orders on the ground that the State Commission failed to appreciate the fact that the Civil Suit already stood disposed of and that it was settled law that the Appellant could decide to either go for arbitration or a consumer complaint as per the judgment of the Hon'ble Supreme Court in *M/s Emaar MGF land Limited vs. Aftab Singh* (Review Petition (C) Nos.2629-2630 of 2018 (Civil Appeal Nos. 23512-23513 of 2017)). The Appellant is before this Commission with the prayer to:

- 1) allow the present Appeal and set aside the Impugned Order dated 10.09.2020 & 12.07.2021 passed by Hon'ble State Consumer Disputes Redressal Commission, Lucknow, Uttar Pradesh in Consumer Complaint No.290 of 2018 and allow the Consumer Complaint;
- 2) to pass an order towards the cost to be payable from the Respondent for litigation expenses endured by the Appellant.
- 3) to pass further orders by the Hon'ble Commission that it deems fits and appropriate to keep in mind the circumstances of the case and in the interest of justice.

3. The Respondent remained unrepresented despite notice and was proceeded *ex parte* on 31.05.2023. We have heard the learned Counsel for the Appellant. Appellant has also filed short synopsis of written arguments.

4. From the facts of this case, it is apparent that the State Commission has dismissed the Complaint on the ground that it was not maintainable in view of the suit pending before the Civil Court.

5. In view of the fact that Section 100 of the Act specifically provides that the provisions of this Act shall be in addition to and not in derogation of any other law in force and as laid down by the Hon'ble Supreme Court in *M/s Imperia Structures Ltd. Vs. Anil Patni & Anr.*, (2020) 10 SCC 783 decided on 02.11.2020 in which it is held that remedies under the Consumer Protection Act were in addition to the remedies available under special Statute, the finding of the State Commission that in view of the matter pending before the Civil Court and the availability of remedies under arbitration, the Consumer Complaint did not lie before the State Commission, cannot be sustained. Learned Counsel for the Appellant has rightly

relied upon *Aftab Singh* (supra) which held that “if a dispute brought before the consumer forum (consumer dispute/s) arises from an agreement which has an arbitration clause, the consumer forum will be the appropriate forum for hearing the dispute” and “Even if there exists an arbitration clause in an agreement and a complaint is made by the consumer, in relation to 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”.

6. In view of foregoing, we find merit in the arguments of the learned Counsel for the Appellant and accordingly allow the Appeal. The impugned orders are set aside and the Complaint is remanded back to the State Commission to decide it on merits after affording due opportunity of hearing to both the parties.

7. Parties are directed to appear before the State Commission on 14.05.2024.

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SUBHASH CHANDRA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER