

14.06.2023
Sl. No.27(DL)
srm

C.O. No. 1734 of 2023

Mr. Minhajuddin Ahmmed

Versus

Mr. Madan Mohan Pal & Ors.

Mr. Ranjan Kali,
Ms. Mili Saha

...for the Petitioner.

The petitioner has challenged an order dated February 10, 2023 passed by the learned State Consumer Disputes Redressal Commission, in Complaint Case No.CC/321/2018.

By the order impugned, the complaint case was dismissed on contest against the opposite party No.1 and *ex parte* against the opposite party Nos.2 and 3. The order is a detailed order by which the facts and arguments advanced by the parties in the proceeding had been dealt with by the learned Commission. The learned Commission found the money receipts were issued by the developer M/s. M. S. Construction which was not impleaded as a party in the proceeding. The opposite party No.1 was not responsible for any laches on the part of the promoter, was also held by the Commission. The complainant was found to have failed to pay the amount as per the schedule of payment as reflected in the

agreement for sale. The partners of the construction company did not appear before the learned Commission. In the cause title of the petition, it had not been mentioned that the opposite party Nos.2 and 3 were the partners representing the developer/firm. Thus, the learned Commission rejected the complaint on merits and also on the ground of non-joinder of parties.

The learned Advocate submits that the rejection of the complaint amounts to substantial injustice. The complaint should not fail for non-joinder of necessary parties. The partners of the developer/firm were impleaded as parties. Hence, the High Court, in exercise of power of superintendence must interfere with the order impugned.

There is a specific finding on merits that the complainant had not paid the amount to the promoter as per the payment schedule in the agreement. The Commission also found that opposite party No.1 was not responsible for the delay caused in handing over the flat. This Court is of the view the order impugned is an appealable order as per the statute. The learned Commission considered all the arguments and documents filed by the complainant and arrived at the conclusion that the payment had not been made by the complainant, as per the schedule of agreement. The petitioner

must avail of the remedy, in accordance with the statute. This is not a case in which alternative remedy would not be a bar.

The revisional application is not entertained and disposed of accordingly.

The petitioner is at liberty to take back the certified copy of the order impugned, upon furnishing a photocopy thereof.

There will be, however, no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)