

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No 2818 of 2020
(Arising out of SLP(C) No 5167 of 2020)**

Rajesh Aggarwal and Others

Appellant(s)

Versus

**M/s Purvanchal Construction Works Private
Limited and Others**

Respondent(s)

ORDER

1 Leave granted.

2 The proceedings which were initiated before this court under Article 136 of the Constitution arose from a consumer complaint instituted in the National Consumer Disputes Redressal Commission by the appellants, who are three members of the Supreme Towers Apartment Owners Association (STAOA). STAOA is an association formed by members of the Bar of the Supreme Court of India who have contributed to the construction of residential flats at Sector 99, NOIDA on a co-operative model. The construction of the flats was alleged to suffer from serious defects, endangering the safety of the occupants. A consumer complaint was filed before the NCDRC in a representative capacity on behalf of all the members who have been allotted flats in the buildings constructed at the site. The application for permission to sue in a representative capacity was pending. Aggrieved by an interim order dated 7 February 2020 of the NCDRC, proceedings were initiated before this Court by the appellants.

3 On 17 June 2020, this Court while entertaining the Special Leave Petition, noted the submission of the appellants that mediation would be a desirable course of action. Recording the submission, this Court passed the following order:

“1 Mr. Rajesh Aggarwal, learned counsel appearing with Dr Rajiv Nanda, on behalf of the petitioners submits that the dispute relates to the construction of flats for a cooperative housing society formed amongst members of the Supreme Court Bar Association and, having regard to the nature of the dispute, it would be appropriate if a mediation takes place before the Mediation Centre of this Court with a view to resolve the dispute. Learned counsel states that this course of action would be beneficial to all the members of the cooperative housing society instead of a long drawn litigation.

2 Issue notice, returnable on 27 July 2020.

3 Service through Dasti as well as by e-mail is permitted, in addition.”

4 As the above order indicates, the basis on which the jurisdiction of this Court was invoked, was the existence of a dispute in regard to the construction of flats for a co-operative housing society formed amongst the members of the Supreme Court Bar Association. A suggestion was made before this Court that if mediation were to take place, the entire dispute would possibly be resolved and would be preferable to the members of the co-operative housing society being involved in a tardy litigation. Following the order of this Court, an attempt has been made to resolve the dispute between the contractor and the members of the STAOA. That has now borne fruit.

5 A Memorandum of Understanding (MOU) has been arrived at between the parties on 25 June 2020, under which the contractor has agreed to carry out repairs to the Supreme Tower Complex in accordance with the recommendations and specifications contained in a Survey Report dated 20 March 2020 of IIT Roorkee. Parties have agreed that the repairs would be carried out under the

supervision of IIT Roorkee or any other expert agency that may be nominated. The MOU dated 25 June 2020 reads as follows:

“MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered on this 25th day of June 2020

Between

Supreme Towers Apartment Owners Association (in short STAOA), having its office at Supreme Towers, Sector - 99, Noida, represented through its President, the First Party

And

Purvanchal Construction Works Pvt. Ltd. having its Office at A7, 2nd Floor, Purvanchal Plaza, LSC, Neelam Mata Road, Mayur Vihar Phase II, Mayur Vihar, Delhi 110091, represented through its Director, the Second Party

And

M/s. Design A, O-20/A, Jangpura Extension, New Delhi - 110014, Third Party

WHEREAS, the aforesaid parties are desirous of settling the disputes pending between them without any duress, fear or coercion and for that purpose have now entered into an amicable settlement, terms of which are reduced to writing as under:

1 That the Second Party has agreed to carry out the repairs in the Supreme Towers Complex at Sector-99, Noida-201304, in accordance with the recommendations and specifications of the Survey Report dated 20.03.2020 of IIT, Roorkee.

2 That the parties further agree that the repairs would be carried out under the supervision of IIT Roorkee and/or any other third party expert agency, appointed by the STAOA for the purpose and certify the work on monthly basis.

3 That it is agreed that the second party will pay the supervision charges to IIT, Roorkee or any other third party agency for supervising the project work.

4 That in addition to the repairs pointed out by IIT, Roorkee vide Survey Report dated 20.03.2020, the second party agrees to carry out the following 09 additional/allied works inside the Supreme Towers Complex:

- i. Circular Road with Paver Blocks of the same quality and specification already laid on front road by the STAOA.
- ii. One Gate of the complex as per specifications by the STAOA, the second party is free to place their sign board.
- iii. Providing and fixing of fibre canopies on the top floor of the each tower to prevent inlet of water on the 18th floor at fire refuge area side only.
- iv. Replacement of existing G.I. pipe from water pump to existing LA pipe ring main water pipe line and from the same existing LA pipe ring main water pipe line to the over head tank feeder line by HDPE pipe line of required dia.
- v. Replacement of existing G.I. pipe from STP pump to STP tank by HDPE Pipe line of required dia.
- vi. To make the existing Fire Fighting system operational, Purvanchal will do all the needful by giving technical assistance and providing skilled trade men only. Any expenditure related to the material etc. will be borne by the STAOA.
- vii. Staircase Grills will be grinded and painted.
- viii. Rain water pipes will be checked, repaired and replaced wherever needed.
- ix. Repairing of dampness/seepage of the swimming pool.

5 That Purvanchal Construction Works Pvt. Ltd. Second party, has agreed to undertake the above mentioned repair work, after discharging his contractual obligation and further voluntarily agreed to do the above said work as a goodwill gesture and to maintain a good and cordial relation with the first party. It may be further mentioned that the second party agreed to undertake the above said work as a one time measure.

6 That the repair works and allied works would commence from 1st week of July and would be completed within a period of one and a half years from the date of commencement of the same. Subject to the filing of the settlement deed by the parties in the Hon'ble Court and its acceptance by the Hon'ble Court.

7 That the second party further agrees that after completion of above said work Purvanchal will take care and maintain the above said work only for a period of two and half year from the date of its completion.

8 That the second party has also agreed to pay to STAOA a sum of Rs 12,00,000/- (Twelve lakhs only) to the First Party as a goodwill gesture for the up gradation of common facilities for the enjoyment of complex residents, within a week after filing of the settlement deed by the parties in the Hon'ble Court and its acceptance by the Hon'ble Court.

9 That the parties agreed that with execution of this MoU all pending issues regarding the rights, claims and liabilities of the parties in relation to the construction of Supreme Tower between the parties including those where the SCBA MS CGHS, the predecessor-in-interest of STAOA the first party is claimant would be deemed to be extinguished and such settlement would be binding upon the predecessors and successors in the interest of both the parties.

10 That the First Party will issue the appreciation certificate of the project in the standard CPWD format to the Second Party.

11 It is agreed that the parties will have right to file this MoU before any Tribunal and/or before any court of law.

12 The parties further agree to file this MoU in SLP(C) No 5167 of 2020, pending before the Hon'ble Supreme Court of India and thereby give quietus to all disputes between them fully and finally.

For Supreme Towers Apartment Owners Association/First Party

(President)

For Purvanchal Construction Works Pvt. Ltd/Second Party

(Managing Director)

For Design A/Third Party

(Udayan Kumar)"

The MOU has been signed by the President of the STAOA and the Managing Director of the contractor, M/s Purvanchal Construction Works Pvt Ltd.

6 We have heard Dr Rajiv Nanda, learned counsel appearing on behalf of the appellants, Mr Vikas Singh, learned senior counsel appearing on behalf of the sixth respondent - Supreme Towers Apartment Owners Association (STAOA), Mr Pallav Shishodia, learned senior counsel appearing on behalf of the first respondent - M/s Purvanchal Construction Works Pvt. Ltd., Mr Vinay Kumar Garg, learned senior counsel appearing on behalf of the fifth respondent - SCBA Multi State Co-operative Group Housing Society Limited and Mr. Dhruv Divan, learned counsel appearing on behalf of the seventh respondent - M/s Otis Elevators, in these proceedings.

7 Mr Vikas Singh, learned senior counsel appearing on behalf of the STAOA submits that the MOU which has been arrived at after detailed discussions with the contractor is acceptable to all members including the appellants and it would be in the overall interest of all the members if a quietus to a long standing dispute is placed with the intervention of this Court.

8 Mr Pallav Shisodia, learned senior counsel appearing on behalf of the first respondent urged that the contractor has in the overall interest of securing peace arrived at the MOU, but in order to protect his interest, it is necessary that the MOU is accepted as a final settlement so as to put an end to the dispute between the parties.

9 Dr Rajiv Nanda, learned counsel who is appearing on behalf of the three appellants, submits that there are a few incidental issues which would survive notwithstanding the settlement which has been arrived at. Dr Nanda has not opposed the acceptance of the settlement by this court.

10 Since the settlement has been arrived at by the STAOA of which the appellants admittedly are members, any surviving issues which the three appellants have, must be raised with the Association of which they are members. Since the Association of which the appellants are members has arrived at a comprehensive settlement with the contractor, it will be appropriate and proper that the MOU which has been placed on record in IA No 62518 of 2020 is duly accepted. We accordingly accept the MOU dated 25 June 2020. The MOU shall constitute a full and final settlement of the disputes between STAOA (including its members) and the contractor. The contractor has agreed and undertaken before this Court to abide by the settlement and to ensure that all its terms are fulfilled.

11 Mr Vikas Singh, learned senior counsel appearing on behalf of STAOA has submitted that there are certain pending issues with M/s Otis Elevators, the seventh respondent to these proceedings. These issues, it has been submitted, are not the subject matter of the MOU which has been arrived at with the contractor since the Association has a separate agreement with the seventh respondent. Mr Singh submitted that STAOA will independently take up those issues with the seventh respondent and attempt a negotiated settlement at an appropriate time. Mr Dhruv Divan, learned counsel appearing on behalf of the seventh respondent has also fairly stated that the seventh respondent is willing to negotiate with STAOA to resolve any outstanding issues as far as the lifts are concerned.

12 The principal dispute relates to alleged defects in the construction of building of STAOA. This is now settled in terms of the MOU. We accept the MOU and render finality to the dispute between the Association and the contractor. The settlement shall govern all disputes between the contractor and the Association in regard to

the construction of apartments for the members of STAOA. Any member of the Association who has an individual grievance, would be at liberty to bring it to the notice of STAOA for appropriate remedial attention. We also clarify that the issues which are sought to be raised by STAOA with the seventh respondent lie outside these proceedings and it would be open to the parties to take recourse to their rights and remedies in regard to the reliefs in relation to the seventh respondent in accordance with law. We record the assurance of the seventh respondent that a genuine effort would be made to attend to the requisitions of STAOA with a view to resolve them in an amicable manner.

13 In the event that IIT Roorkee is unable to carry out the work of supervision as envisaged in clause (2) of the MOU, it has been agreed that the work shall be entrusted to National Buildings Construction Corporation Limited or IIT Delhi, as may be agreed between the STAOA and the contractor.

14 It is agreed between the parties that the MOU is comprehensive enough to cover the items which have been referred to in paragraph 12(ii) of the joint application dated 3 July 2020, which was submitted to the sole Arbitrator (Hon'ble Mr Justice G S Singhvi, former Judge of the Supreme Court of India). A copy of this order shall be accordingly placed before the learned Arbitrator. Formal directions for the closure of the arbitral proceedings shall be passed by the learned Arbitrator in view of the settlement.

15 In view of the order which has been passed in the present appeal, the proceedings before the National Consumer Disputes Redressal Commission, New Delhi, shall stand closed and Consumer Case No 1805 of 2019, shall stand disposed of.

16 Learned counsel for the applicant in IA No 66057 of 2020 seeks to withdraw the interlocutory application, with liberty to adopt appropriate remedies in accordance with law. The interlocutory application is permitted to be withdrawn with liberty as prayed.

17 The appeal is accordingly disposed of.

18 Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Indu Malhotra]

.....J.
[K.M. Joseph]

**New Delhi;
July 27, 2020**

ITEM NO.21

Court 4 (VC)

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.5167/2020

(Arising out of impugned final judgment and order dated 07-02-2020 in CC No. 1805/2019 passed by the National Consumers Disputes Redressal Commission, New Delhi)

RAJESH AGGARWAL & ORS.

Petitioner(s)

VERSUS

M/S PURVANCHAL CONSTRUCTION WORKS PVT.
LTD. & ORS.

Respondent(s)

(With appln.(s) for permission to mediation, orders/directions, exemption from filing affidavit, exemption from filing O.T. and permission to file additional documents/facts/Annexures)

Date : 27-07-2020 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE INDU MALHOTRA
HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s) Mr. Rajesh Agarwal, Adv.
Dr. Rajiv Nanda, AOR
Dr. B.K. Dash, Adv.
Mr. Puneet Bhatnagar, Adv.

For Respondent(s) Mr. Pallav Shishodia, Sr. Adv.
R-1 Mr. Ejaz Maqbool, AOR
Ms. Akriti Chaubey, Adv.
Ms. Aishwarya Sarkar, Adv.

For R-2 Ms. Anusuya Sadhu Sinha, Adv.
Ms. Pallavi Pratap, Adv.
M/s. Pratap and Co.

- For R-5** Mr. Vinay Kumar Garg, Sr. Adv.
 Dr. Abhishek Atrey, AOR
 Mr. Neeraj Kumar Sharma, Adv.
 Mr. Umesh Babu Chaurasia, Adv.
 Mr. Arun Mishra, Adv.
 Ms. Ambika Atrey, Adv.
- For R-6** Mr. Vikas Singh, Sr. Adv.
 Mr. Rajesh Tyagi, Adv.
 Mr. Vibhakar Mishra, Adv.
 Mr. Sibho Sankar Mishra, AOR
- For R-7** Mr. Dhruv Dewan, Adv.
 Mr. Rohan Batra, AOR
 Mr. Padmanabh Sethunath, Adv.
- Mr. Vikas Singh, Sr. Adv.
 Mr. M.R. Shamshad, AOR
 Mr. Ajay Sharma, Adv.
 Mr. Deepak Tyagi, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 Leave granted.
- 2 The appeal is disposed of in terms of the signed order.
- 3 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
AR-cum-PS

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed order is placed on the file)