

**Rainbow Construction (Developer) Represented by Its Partners and Others  
Vs. Tirthankar Chatterjee and Others**

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Vs. Tirthankar Chatterjee and Others**

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**Court :** West Bengal State Consumer Disputes Redressal Commission SCDRC  
Kolkata

**Decided On :** Oct-29-2013

**Judge :** Kalidas Mukherjee, President & the Honourable Mrs. Mridula Roy,  
Member

**Appeal No. :** S.C. Case No. RP/187 of 2012 (Arising out of order dated  
19.09.2012 of Consumer Case No. 36 of 2012 of D.C.D.R.F., North 24 Pgs.) &  
S.C. Case No. RP/18 of 2013 (Arising out of order dated 16.01.2013 of Consumer  
Case No. 36/2012 of D.C.D.R.F., North 24 Pgs.)

**Appellant :** Rainbow Construction (Developer) Represented by Its Partners and  
Others

**Respondent :** Tirthankar Chatterjee and Others

**Judgement :**

Mridula Roy, Member:

This order will govern both the Revision Petition being Nos. RP/187/2012 and  
RP/18/2013 since both the revision petitions are filed in connection with the  
complaint case being No. CC/36/2012 pending before Ld. District Forum, North 24  
Pgs.

In RP/187/2012 the Revision Petitioner challenged the impugned order being No. 14 dated 19.09.2012.

In RP/18/2013 the Revision Petitioner challenged the impugned orders being Nos. 21, 22 and 23 dated 07.12.2012, 01.01.2013 and 16.01.2013.

The case of the Complainants, in brief, is that they are the owners of the property in question by way of purchase of the different flats from the O.Ps and now in the possession of their respective flats and also got registration of Deed of Conveyance of the respective flats in favour of them. The flat owners Complainants alleged deficiency in service on the part of the O.Ps for not providing the facilities as per terms of the respective Agreement for Sale entered into between the parties with regard to the unfinished construction and not providing certain facilities.

When advancing the argument the Ld. Advocate for the Revision Petitioners has submitted that vide the impugned order being No. 14 dated 19.09.2012 no opportunity was given to the O.Ps (Revision Petitioners herein) to put objection against the Ld. Commissioners report. Ld. Advocate for the Revision Petitioners has further submitted that by vide impugned orders being Nos. 21, 22 and 23 no opportunity was given to them for cross-examination of the Complainants.

In course of hearing Ld. Advocate for the O.Ps has submitted that to expedite the proceeding Ld. District Forum rightly passed those orders.

On perusal of the record it appears that Ld. District Forum vide No. 21 dated 07.12.2012 fixed 01.01.2013 for filing Evidence-in-Chief by the parties. It is well settled that whenever one of the parties files Evidence-in-Chief, the right to cross-examine by the other side accrues. Filing Evidence-in-Chief by both sides simultaneously is not the acceptable proposition of law. In the instant case it is the Complainant who is supposed to file the Evidence-in-Chief first and the same will be followed by cross-examination by the O.Ps unless and until they decline to do so. But in the instant case the O.Ps did not get the opportunity to exercise their legal right to cross-examine the Complainant.

Further, it appears from the impugned order No. 22 dated 01.01.2013 that the Ld. District Forum allowed the petition filed by the O.Ps praying for amendment of the W.V. but fixed the next date i.e. 16.01.2013 for filing Evidence-in-Chief as a dead last chance i.d. penalty of Rs.1,500/-. Since the petition for amendment of W.V. has been allowed by the Ld. District Forum ought to have fixed the next date for filing amended version of W. V. or direct the office to incorporate the amended portion in the W.V. In the instance case nothing has been done to that effect.

On perusal of order No. 23 dated 10.01.2013 it appears that the O.Ps filed the amended version of W.V. but the Ld. District Forum observing that they did not file the Evidence-in-Chief on that date imposed a penalty of Rs.1,500/- on them and fixed the next date i.e. 29.01.2013 for filing Evidence-in-Chief along with Rs.1,500/-.

While perusing the order being No. 14 dated 19.09.2012 it appears that the O.Ps did not get the chance to file objection in respect of the Ld. Commissioners report.

Under the foregoing state of affairs we are of considered opinion, that there are material irregularities in passing the impugned orders.

In the result, the both the revision petitions succeed.

Hence, ordered the revision petitions are allowed on contest but without any order as to cost. The impugned orders are set aside with a direction to the Ld. District Forum to give opportunity to the parties to adduce Evidence-in-Chief followed by cross-examination and reply and to give opportunities to the O.Ps to file objection against the Ld. Commissioners report. Thereafter the Ld. District Forum will decide the case according to law.

Thus, the revision petitions are disposed of.

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