

(2014) 11 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

Case No : NO 1495 of 2014

COL (RETD.) SUNIL KUMAR & ORS.

APPELLANT

Vs

THOTA CHANDRASEKHARA REDDY

RESPONDENT

Date of Decision : 03-11-2014

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : 2015 2 CPJ 267

Hon'ble Judges : J.M. Malik, S.M. Kantikar

Advocate : A.K. Tewari, Sayed Zafarullah Hussaini

Judgement

1. This order shall decide two Revision Petitions filed by both the parties against each other pertaining to the order dated 31.10.2013 rendered by the State Commission. Shri Thota Chandrasekhara Reddy applied for the Dwelling Unit of the Scheme launched by the OPs- Col. (Retd.) Sunil Kumar (CEO)-OP-1, Sri M.K. Maity, Deputy Director-OP-2 and Sri Kailash Chandra Ghai, Project in-charge-OP-3. On 10.05.2007, the Dwelling Unit measuring 637 sq.ft. was allotted in favor of the complainant. He deposited an initial amount of RS. 25,000/- on 27.02.2006. The appellant paid Rs. 6,76,000/- on 03.11.2010 towards part payment of sale consideration. As per terms, he had paid the part payment in the sum of Rs. 7,01,000/-. Rest of the amount was to be paid in instalments. The brochure revealed that construction work was to be completed within 30 months from the date of allotment i.e. 5 th October 2006. Five years had elapsed but the construction was not completed.

2. The complainant and his wife suffered from Cardiac problem and rheumatoid arthritis. They were in need of money. On 09.03.2011, they requested the OPs to refund the amount. The OPs, however, refunded the amount of Rs. 6,07,310/- after deducting Rs. 30,690/- towards withdrawal charges from the first instalment. The complainant requested that the entire money should be refunded. However, his request did not evoke any response. The complaint was filed before the District Forum. The District Forum dismissed the complaint.

3. The complainant filed the appeal before the State Commission. The State Commission partly allowed the appeal and directed the OPs to pay 20,000/- together with costs of Rs. 3,000/-.

4. Still aggrieved by that order, both the parties filed the separate Revision Petitions. We have heard both the parties at length. Counsel for the Opposite Parties contended that they had rightly deducted withdrawal charges in the sum of 30,690/- from the total amount of 7,01,200/-. It was also explained that the complainant did not make the withdrawal application within the specified time, therefore, he is not entitled to any interest for the amount. It was explained that the delay in completing the construction work was due to Telangana agitation and non-availability of labour for the construction work in Hyderabad city. Again there was escalation of the prices for construction work which is approximately 15%. Again, as per the guidelines of the scheme, if any allottee wanted to withdraw from the scheme, the OP organization would not charge any withdrawal charges from the amount deposited by the beneficiary and the same would be refunded alongwith interest @ 6.5% as the special case. It was specifically mentioned that the said option will remain open for 45 days from the date of issuance of letter dated 5.10.2006. It was also stipulated in the agreement that the OPs would charge interest @ 15% p.a. for late

payment of instalments. It was also argued that the scheme introduced by the OPs is a Social Welfare Scheme made exclusively for the benefit of Central Government Employees, on no profit no loss basis. Learned counsel for the petitioner submitted that they have given lucid excuse for the delay caused in construction of the apartment. It was also explained that the letter addressed to the complainant dated 09.12.2012, the delay was explained. There was injunction order granted by the District Forum, in a case filed by the neighboring plot owner. The reason for such a long period to construct the basement was because the project area is covered under blasting prohibited zone and the rocky strata was to be excavated chiseling. Again there was abnormal monsoon in Hyderabad.

5. All these arguments have left no impression upon this Commission. It is but clear that the OPs waddled out of the commitment made to the consumers. The State Commission explained that the OPs stretched the time for commencement and completion of construction of the venture over a period of 7 years and it could not offer the complainant and the other allottees the withdrawal scheme at the earliest point of time so that the allottees could opt for an alternative flat. The OPs should have assumed before hand what problems they are going to face. Day to day delay was not explained. There is no evidence that the OPs made an attempt to work against the cloak, even after the expiry of 30 months. The OPs did not construct the house in time and piled on the agony of the allottee by deducting withdrawal charges from his first instalment.

6. The OPs are asking for escalation amount which reveals the malafide intention on their part. They should not have taken up cudgels with their neighboring plot

owner because it was likely to delay the matter inordinately. If the labour charges have increased how the allottees can be held responsible for the same. Telangana agitation did not affect the normal course of the business. The agitation is concerned only with the shops in the market not in respect of the construction going on somewhere else. The excuses made by the OPs are lame and fragile. Such like stories can be created at any time. The OPs have utilized the amount of the petitioners for more than six years. The OPs have tried to wrench the facts from their real significance. The OPs want to have the benefit of both the worlds.

7. However, the compensation granted by the State Commission is not adequate. The complainant has made the following prayers:- "1. On Rs. 25,000/- from 27-02-2006 to 21-10-2011 Rs. 21,188

2. On Rs. 1,79,600/- from 6-7-2006 to 21-10-2011 Rs.1,42,558

3. On Rs. 1,02,300/- from 12-06-2007 to 21-10-2011 Rs. 66,879

4. On Rs.1,36,400/- from 29-10-2008 to 21-10-2011 Rs. 60,925

5. On Rs.1,02,300/- from 9-9-2009 to 21-10-2011 Rs. 32,480

6. On Rs.1,55,400/- from 3-11-2010 to 21-10-2011 Rs. 22,533

_____ Rs.3,46,563/-@@@"

The complainant demanded interest @ 15% p.a.

8. Lastly, this is a higher rate to which the complainant is not entitled to. As per the agreement OPs are liable to pay interest @ 6.5% but due to bizarre conduct of the OPs, we enhance it to 7.5% which will come to Rs. 1,73,282/- till 20.01.2011 when the money was paid to the complainant. The OPs are directed to refund Rs. 30,690/- from 21.10.2011 with interest @ 7.5% till its realization. We direct the OPs to pay the said amount.

9. Consequently, we dismiss the Revision Petition filed by the OPs and accept the appeal filed by the complainant. The entire amount be paid to the complainant within 90 days from the date of receipt of the copy of this order otherwise after the expiry of the above said 90 days, the interest shall stand enhanced to 10% p.a. till its realization.