

M/S. ALIENS DEVELOPERS (P) LTD. & 2 ORS. Vs KATAKAM SRINIVASA RAO & ANR.

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Aug. 28, 2015

Citation: 2016 1 CPJ 286

Hon'ble Judges: K.S. Chaudhari

Advocate: K.P.K. Pillay, A.V.S. Raju, Rajesh Goyal, Shekhar G. Devasa, Suyodhan Byrapaneni

Judgement

1. All these appeals arise out of common order of State Commission involving same question of law; hence, decided by common order.

2. Appeal Nos. 594 to 607 of 2014 and Appeal Nos. 1012, 1015, 1016 & 1013 of 2014 have been filed by the OP and Appeal No. 1020,

1021 & 1189 of 2014 have been filed by Complainant against the order dated 4.8.2014 passed by the learned A.P. State Consumer Disputes

Redressal Commission, Hyderabad (in short, "the State Commission") in CC No. 139/2013 - Bappaditya Sarka & Anr. Vs. M/s. Aliens

Developers (P) Ltd. & Ors., CC No. 203/2013 - Sri Metta Sudhakar & Anr. Vs. M/s. Aliens Developers (P) Ltd., CC No. 245/2013 - Ranjeet

Sharma & Anr. Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No. 134/2013 - Rachamalla Pramod Kumar Reddy Vs. M/s. Aliens

Developers (P) Ltd. & Ors., CC No. 136/2013 - Katakam Srinivasa Rao & Anr. Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No.

157/2013 - OVS Nagendra Kumar & Anr. Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No. 161/2013 - Rishi Kapoor Vs. M/s. Aliens

Developers (P) Ltd. & Ors., CC No. 174/2013 - Phani Kumar Bommadevara Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No. 175/2013 -

Parikshat Shukla & Anr. Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No. 176/2013 - Gadagoju Gopi & Anr. Vs. M/s. Aliens Developers

(P) Ltd. & Ors., CC No. 196/2013 - Thippareddy Venkat Reddy Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No. 213/2013 - Naga

Ramesh Kuruba Buchannagri Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No. 214/2013 - Ashok John Koshy & Anr. Vs. M/s. Aliens

Developers (P) Ltd. & Ors., CC No. 215/2013 - Chandan Varshney & Anr. Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No. 216/2013 -

Santosh Yadawar Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No. 237/2013 - Nirmala Tammineni Vs. M/s. Aliens Developers (P) Ltd. &

Ors., CC No. 238/2013 - Gaurav Chakraborty Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No. 239/2013 - Dr. Chitore Kumar Guha

Sarkar Vs. M/s. Aliens Developers (P) Ltd. & Ors. by which, complaints were allowed partly.

3. Brief facts of the case in CC No. 139/2013 - Bappaditya Sarka & Anr. Vs. M/s. Aliens Developers (P) Ltd. & Ors. are that complainants

agreed to purchase flat from OP for a sum of Rs.67,09,125/- and made part payment and agreement was executed between the parties on

25.5.2011. As per agreement, project was to be completed before February, 2011 with a grace period of 9 months. It was further submitted that

complainant obtained loan from Bank and as per tripartite agreement, bank released Rs.22,50,000/- to OP. In spite of receiving so much amount,

OP has not started project and cheated complainants. Alleging deficiency on the part of OPs, complainants filed complaint for claiming refund

along with 18% p.a. interest and compensation, etc. OP resisted complaint and submitted that as per Arbitration Clause, complaint was not

maintainable. It was further submitted that project could not be commenced in view of proposed road under Master Plan, until realignment of the

proposed road without affecting the land in survey number 384 was made. It was further submitted that realignment of proposed road was

approved on 3.4.2008 and permission approving building plan was accorded on 11.04.2008 and NOC from Airport Authority was received on

10.7.2008. It was further submitted that HUDA accorded technical approval on 14.10.2009 for ground + 20 upper floors and release of building

permission upto 29 floors was awaited. OP informed complainant about delay in completion of project due to delay in clearance from authorities

concerned. It was further submitted that as per clauses of agreement, OP was required to pay Rs.3/- per sq. ft. for delay in handing over

possession. It was further submitted that complainants failed to pay balance sale consideration and if complainants want to cancel the agreement,

they have to forgo cancellation charges. Denying any deficiency on their part, prayed for dismissal of complaint.

4. In other complaints also similar facts have been pleaded by both the parties except difference of amounts paid by complainants to OPs. Learned

State Commission after hearing both the parties, allowed complaints vide impugned order and directed OP to refund amount received with 15%

p.a. interest along with Rs.1,00,000/- towards compensation and Rs.5,000/- towards cost. In Complaint No. 139, 203, 245 and 134 of 2013

interest was allowed from date of filing the complaint till payment whereas in other complaints interest was awarded from date of last payment

against which, these appeals have been filed by OP and 3 appeals have been filed by complainants for enhancing amount of interest and

compensation.

5. Heard learned Counsel for the parties finally at admission stage and perused record.

6. Learned Counsel for the OPs submitted that on account of delay in approvals, project could not be completed which amounts to force major;

even then, learned State Commission committed error in allowing interest @ 15% p.a. along with compensation; hence, appeals be allowed and

rate of interest be reduced to 9% and compensation be deleted. On the other hand, learned Counsel for the complainants submitted that learned

State Commission has not committed any error in allowing 15% p.a. interest, but has committed error in allowing interest from date of filing

complaints in some of the cases; hence, appeals filed by OPs be dismissed and appeals filed by the complainants be allowed and impugned order

be modified.

7. Learned Counsel for the OP/appellants does not dispute legality of order to the extent of refund of amount. He pressed his appeal only to the

extent of awarding 15% p.a. interest and compensation.

8. Learned Counsel for the OP submitted that on account of force major construction could not be completed and in such circumstances, award of

9% p.a. interest is justified. Learned Counsel for the OP placed reliance on judgment of Hon"ble Apex Court in Sri Venkateshwara Syndicate Vs.

Oriental Insurance Co. Ltd. & Anr. - (2009) 8 SCC 507 in which it was observed that rate of interest as compensation depends on facts and

circumstances of each case and has to be worked out after determining the amount of loss suffered by the consumer. In the same judgment, in

paragraph 41 judgment of Hon"ble Apex Court in Kaushnuma Begaum Vs. New India Assurance Co. Ltd. was referred in which it was observed

that with a change in economy and policy of Reserve Bank of India, rate of interest has been lowered and 9% p.a. interest is proper. This

judgment is not applicable to the facts and circumstances of these cases because it was pertaining to claim against Insurance Co. for deficiency in

service whereas in the case in hand, complainants have parted with their hard-earned income along with funds taken from Bank as loan with rate of

interest ranging from 10.52 to 12.5% p.a. In such circumstances, award of 15% p.a. interest is not on higher side. Ld. Counsel for the OP has also

placed reliance on judgment of Hon"ble Apex Court in (2005) 9 SCC 466 - Haryana Urban Development Authority Vs. Krishna Goel in which as

possession was not offered in time, award of interest @ 18% p.a. by this Commission was not held proper and it was reduced to 12% from the

date of deposit till date of payment. On the other hand, learned Counsel for the complainants placed reliance on judgment of Hon"ble Apex Court

in (2004) 13 SCC 614 - DDA Vs. Krishan Lal Nandrayog in which award of 15% p.a. interest due to delay in delivery of possession of flat was

held proper. It was further observed that this interest is by way of awarding damages for the loss in terms of money as well as the mental agony

and other sufferings complainant underwent. In the light of Krishan Lal's (supra) judgment, I am of the view that order awarding 15% p.a. interest

by the learned State Commission cannot be said to be on higher side and impugned does not call for any interference to this extent.

9. Learned Counsel for the OP submitted that if interest @ 15% is upheld, grant of compensation of Rs.1,00,000/- to each complainant is required

to be set aside. He has also drawn my attention towards judgment of Krishna Goel (Supra) in which compensation of Rs.10,000/- for mental

agony was reduced to Rs.2,000/-. In Krishan Lal (Supra) case, 15% interest was upheld as compensation by way of awarding damages for the

loss in terms of money. When 15% p.a. interest is going to be upheld, there is no justification for upholding Rs.1,00,000/- as compensation to the

complainants. No reason has been assigned by the learned State Commission in awarding compensation to the tune of Rs.1,00,000/- to the

complainants. Learned Counsel for the complainant submitted that grant of Rs.1,00,000/- as compensation is proper as complainants have been

deprived of the property and they also incurred huge expenditure in litigation. Perusal of impugned order reveals that cost of Rs.5,000/- to each of

the complainants has already been allowed by the learned State Commission. In such circumstances, Rs.1,00,000/- as compensation towards

litigation cost cannot be presumed and upheld and this amount is to be reduced to Rs.50,000/-, as reduced by Hon"ble Apex Court in Krishna

Goel (supra) case.

10. Perusal of impugned order reveals that learned State Commission allowed interest from the date of filing complaint in Complaint No.

203/2013, 245/2013 and 134/2013 whereas it allowed interest from the date of payment in other complaints. No reason has been assigned for

differentiating payment of interest from the date of filing complaint in aforesaid cases and to this extent, Cross Appeal No. 1189/2014 -

Rachamallu Pramode Kumar Reddy Vs. M/s. Aliens Developers (P) Ltd. & Ors., Cross Appeal No. 1020/2014 - Metta Sudhakar & anr. Vs.

M/s. Aliens Developers (P) Ltd. & Ors. and Cross Appeal No. 1021/2014 - Ranjit Sharma & Anr. Vs. M/s. Aliens Developers (P) Ltd. & Ors.

filed by the complainants are to be allowed partly and interest is to be allowed from the date of last payment as allowed in other complaints.

11. Consequently, appeals filed by the OP in CC No. 139/2013 - Bappaditya Sarka & Anr. Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC

No. 203/2013 - Sri Metta Sudhakar & Anr. Vs. M/s. Aliens Developers (P) Ltd., CC No. 245/2013 - Ranjeet Sharma & Anr. Vs. M/s. Aliens

Developers (P) Ltd. & Ors., CC No. 134/2013 - Rachamallu Pramod Kumar Reddy Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No.

136/2013 - Katakam Srinivasa Rao & Anr. Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No. 157/2013 - OVS Nagendra Kumar & Anr.

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- Phani Kumar Bommadevara Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No. 175/2013 - Parikshat Shukla & Anr. Vs. M/s. Aliens

Developers (P) Ltd. & Ors., CC No. 176/2013 - Gadagoju Gopi & Anr. Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No. 196/2013 -

Thippareddy Venkat Reddy Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No. 213/2013 - Naga Ramesh Kuruba Buchannagri Vs. M/s.

Aliens Developers (P) Ltd. & Ors., CC No. 214/2013 - Ashok John Koshy & Anr. Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No.

215/2013 - Chandan Varshney & Anr. Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No. 216/2013 - Santosh Yadawar Vs. M/s. Aliens

Developers (P) Ltd. & Ors., CC No. 237/2013 - Nirmala Tammineni Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No. 238/2013 - Gaurav

Chakraborty Vs. M/s. Aliens Developers (P) Ltd. & Ors., CC No. 239/2013 - Dr. Chitore Kumar Guha Sarkar Vs. M/s. Aliens Developers (P)

Ltd. & Ors. partly allowed and Cross Appeal No. 1189/2014 - Rachamallu Pramode Kumar Reddy Vs. M/s. Aliens Developers (P) Ltd. &

Ors., Cross Appeal No. 1020/2014 - Metta Sudhakar & anr. Vs. M/s. Aliens Developers (P) Ltd. & Ors. and Cross Appeal No. 1021/2014 -

Ranjit Sharma & Anr. Vs. M/s. Aliens Developers (P) Ltd. & Ors. filed by the complainants are partly allowed and impugned order dated

4.8.2014 passed by the learned A.P. State Consumer Disputes Redressal Commission, Hyderabad (in short, "the State Commission") in all these

complaints are partly modified and order granting compensation of Rs.1,00,000/- is substituted by Rs.50,000/- and order allowing interest from

date of filing complaint in Complaint No. 203 of 2014 - Metta Sudhakar & Anr Vs. M/s. Aliens Developers (P) Ltd., Complaint No. 245 of 2014

- Ranjit Sharma & Anr. Vs.M/s. Aliens Developers (P) Ltd. and Complaint No. 134 of 2013 - Rachamallu Pramode Kumar Vs.M/s. Aliens

Developers (P) Ltd. Reddy is substituted by words from the date of last payment and rest of the orders in all the complaints is upheld. Parties to

bear their costs.