

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1302 OF 2019

(Against the Order dated 21/02/2019 in Appeal No. 156/2016 of the State Commission
Kerala)

1. ABDUL GAGOOR

BLUE JAY REALITY, T-1-1509, SANKARAKULANGARA
TEMPLE ROAD, POONKUNNAM THRISSUR, KERALA-
680026

.....Petitioner(s)

Versus

1. JOSE K.V

CHRIS VILLA AISWARYA GARDEN, CHIYYARAM P.O.
THRISSUR, KERALA-680026

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING
MEMBER**

FOR THE PETITIONER : FOR PETITIONER : MR.DILEEP POOLAKKOT, ADVOCATE
MR. SHIVAM SAI, ADVOCATE

FOR THE RESPONDENT : FOR RESPONDENT : MR. SANGEETH MOHAN K., ADVOCATE

Dated : 21 November 2024

ORDER

1. The present Revision Petition is filed under Section 21(b) of the Consumer Protection Act, 1986 (the "Act") against the State Consumer Disputes Redressal Commission, Kerala ('State Commission') order dated 21.02.2019 in Appeal No. 156 of 2016, wherein the State Commission allowed the appeal filed by the Complainant and reversed the Order of District Consumer Dispute Redressal Forum, Thrissur ("District Forum") dated 29.01.2016 in CC No. 65 of 2011.

2. For convenience, the parties in the present matter are referred as per the Complaint before District Forum.

3. Brief facts of the case, as per the complainant, are that he entered into an agreement on 27.10.2009 with the Opposite Party (OP) to construct a villa @ Rs. 1624 per Sq Ft and had paid Rs. 12,25,000/- in six instalments. The OP later demanded Rs. 2,00,000/- on 17.09.2010, stating that the ground floor slab was completed. However, on inspection, he found that the work was not completed as claimed. He also observed various defects in construction, including poor-quality materials such as laterite stones and mud, incorrect concreting of the lintel, and large holes in the basement that could affect the safety of the building. Also, windows and doors were not installed as per the approved plan, and the OP continued construction without resolving these issues. The complainant had the work inspected by an expert, who estimated the completed work to be worth Rs. 3,00,000/-. As the cost of land was Rs. 90,000/-, the total value of the work done, including the land, was Rs. 3.90 lakhs. He alleged that OP had already received Rs. 12.25 lakhs, i.e. Rs.8.35 lakhs in

excess. Due to poor quality of work and financial discrepancies, he lost faith in the OP. A legal notice was issued to OP on 20.12.2010 and he filed a consumer complaint before District Forum and sought refund of Rs.8.35 lakhs, with interest, compensation, and costs.

4. In reply before the District Forum, OP admitted to the execution of the agreement and the acceptance of Rs. 12.25 lakhs. But, asserted that the complainant failed to make timely payments, which delayed the construction. The OP highlighted Clauses 7 & 11 of the agreement, which allowed them to stop construction or proceed at their discretion if the complainant failed to remit payments. The complainant was to pay additional amount when the construction reached the lintel level. However, he failed to do so. As a result, the construction was delayed. The OP denied that the complainant was entitled to the high lifestyle package and furniture worth Rs. 1,00,000/- due to his failure to adhere to the payment schedule. The complainant still owed Rs. 2,25,650/-, which was part of total construction cost of Rs. 14,80,650/-. There was no deficiency in their service.

5. The learned District Forum vide Order dated 29.01.2016, allowed the complaint with the observations and directed the OP as under:

“9. In the result the complaint is partly allowed as per the following orders:

1. The Complainant is directed to deposit the balance amount as per Ext.P1 agreement before the Forum or deposit in any bank and to produce the deposit receipt before this Forum and to intimate the opposite party regarding the deposit;

2. The opposite party is directed to complete the remaining works as per the agreement and plan to the satisfaction of the Forum within four months from the date of deposit of the balance amount;

3. After completing the works, opposite party can apply for the deposit amount with the knowledge of the complainant;

4. If the opposite party failed to comply the order within the time allowed/extended time limit, the complainant is entitled to release that amount and the opposite party is directed to pay Rs.5,00,000/- as compensation to the complainant and the complainant is permitted to complete the work of the house and live there by enjoying the facilities of the scheme.

5. Opposite party is directed to pay Rs. 10,000/- as cost of this complaint to the complainant within one month from receiving copy of this order.”(Extracted from translated copy)

6. Being aggrieved, the Complainant filed Appeal No.156/2016 and the State Commission vide order dated 21.02.2019 allowed the appeal with following observations: -

"5. We heard the counsel on both sides and perused the records. At the outset we may say that the view expressed by the forum that it has no power to revoke and cancel the agreement entered by the parties is not at all correct. Even otherwise there was frustration of the contract entered by the parties when the construction work was not completed within the time limit fixed Ext.P1 agreement. The order passed by the forum with directions to both sides, compelling the complainant to make deposit of the balance sum and the opposite party to complete the construction within time limit fixed from the date of receipt and its intimation to say the least is not at all appreciable. Despite five years after entering into Ext.P1 agreement for construction of the Villa and collection of 12.25 lakhs from complainant the work done by the opposite party, according to the expert commissioner, was of value of only Rs.1,80,582. Perusal of the records especially the evidence of opposite party as RW1 would clearly demonstrate that he had no reasonable excuse for the delay in completing the construction of Villa. Though he would contend that work of the value of more than Rs.14 lakhs was done for the villa of complainant no material or records were produced nor did he succeed in showing that the assessment made by the expert commissioner over the work done was incorrect. When such be the case the direction issued by the forum asking the complainant to deposit the balance sum for completing the construction and that too by the opposite party who had flouted the terms of the agreement is patently erroneous. So we find that the direction made for deposit of the balance sum by the complainant and for completing construction by opposite party is liable to be set aside. All the same it has to be noted that the definite case of the complainant in the complaint is that on assessment through an expert the value of the work done by the opposite party was Rs.3,00,000/-. The land value of the site for Villa was Rs.90,000/-, and in the complaint he claimed only Rs.8.35 lakhs deducting the sums due for work done and land value in the sum already paid for the work. When his claim was only for refund of an amount of Rs.8.35 lakhs admitting the value of the work done by the opposite party at Rs.3,00,000/- and also the value of Rs.90,000/- payable for the land much merit cannot be given to the sum of Rs.1,80,582/- assessed by the expert commissioner as the value of work done by the opposite party. We have to take note of the admission of the complainant that the opposite party had done work for the value of Rs.3,00,000/- and that the land value was Rs.90,000/-. Such sums have to be deducted from the sum paid for construction of villa. There was clearly deficiency of service on the part of the opposite party in delaying the construction and not completing the villa after collecting substantial sum much more than the work done by him from complainant. His plea that there was default in payment of instalments due for the construction when he has collected the sum of Rs.12.25 lakhs and carried out construction only of Rs.3,00,000/- as admitted by complainant, is unworthy of any merit.

In reversal of the order and directions issued by the lower forum opposite party is directed to refund a sum of Rs.8.35 lakhs collected in excess to the complainant with 8% Interest from the date of filing of the complaint within one month from the date of receipt of copy of this judgment. He shall also pay cost of Rs.10,000/-ordered to be paid by the lower forum to the Complainant with the above sum. Appeal is allowed directing both sides to suffer their costs.”

7. Being dissatisfied by the State Commission Order dated 21.02.2019, the OP filed the instant Revision Petition No. 1302 of 2019.

8. In his arguments, the learned counsel for Petitioner/OP reiterated the factual background, evidence, and written versions. His argument is based on the project, payments and contractual obligations of both parties. He is a small-scale contractor, purchased a piece of land in 2007 to develop villas. The agreement in question was entered into on 27.10.2009 for a villa of 1150 sq. ft. priced @ Rs. 1800 per Sq Ft for Rs. 20,70,000/-. Later, the complainant sought an increase in size to 1282 Sq Ft, which revised the cost to Rs. 23,07,600/- and requested a letter to show a reduced construction cost of Rs. 1624 per Sq Ft as against Rs.1800 to obtain a bank loan, which he provided. This reduced the total project cost to Rs.20,82,000/-. This was given in good faith, while the actual cost remained Rs. 23,07,600/-. The complainant consistently delayed payments, which delayed the work. Despite delay, he issued a letter at the complainant's request and continued the construction. Complainant paid only Rs. 2 Lakhs on 21.08.2010 but later issued a legal notice on 20.12.2010 accusing OP of misrepresentation. The OP responded on 31.12.2010 denying the allegations and he filed a complaint before the District Forum seeking to complete the villa on their own and refund of Rs.8,35,000/- with interest. The District Forum, on 29.01.2016, directed both parties to proceed with completion of villa, with specific directions regarding payments. On the complainant filing an Appeal, State Commission vide order dated 21.02.2019 directed the OP to refund Rs.8.35 lakhs with interest @ 8% from the date the complaint. OP argued that there was no deficiency in service or unfair trade practice. The complainant was present at the construction site during various stages and never raised any objection about quality. Allegations of substandard material or work quality are unfounded. Under Clause 7 of the agreement, the OP had right to stop the work due to non-payment. The State Commission's order lacked proper reasoning and was based solely on the complainant version. Specifically, its conclusion that there was no reasonable excuse for the delay in construction was erroneous, as the delay was caused due to complainant's failure to make payments. The contract explicitly stated that possession would only be handed over after full payment, and the complainant had no right to revoke the agreement unilaterally. OP could not be compelled to continue work without timely payments. The materials used were as agreed upon, and he objected to the findings of the expert report. The land purchased by him was initially underdeveloped, but he developed the property with roads and other amenities, including 43 other plots. They acted in good faith throughout the project.

9. The learned counsel for Respondent /Complainant emphasized the factual background of the complaint and asserted that no substantial grounds for revision under section 21 (b) of

the Act is made out in the present case. He further contended that the dispute between the parties is purely civil in nature and Consumer Protection Act cannot be invoked does not have any merit. He further argued that the present case is a classic case of abuse of process of law. He further argued that Petitioner is liable to be compensated the Respondent for the harassment and mental agony caused to him. He further contended that the agreement being non-revocable is against the settled legal principles. The Counsel sought dismissal of the Petitioner's Revision petition and written submission, asserting that the matter has been justly decided by the lower forums on merit. He has relied upon the following judgments:

- i. Sunil Kumar Maity vs. SBI 2022 SCC OnLine 77;*
- ii. Mrs. Rubi (Chandra) Dutta vs. M/s. United India Insurance Co. Ltd., (2011) 11 SCC 269;*
- iii. Birla Institute of Technology and Science v. Abhishek Mengi S/o Virender Kumar, 2013 SCC OnLine NCDRC 394;*
- iv. Lourdes Society Snehanjali Girls Hostel and Ors. V. H and R Johnson (India) Ltd. and Ors., AIR 2016 SC 3572;*
- v. Avon Beej Company v. Anoop Singh, 2020 SCC OnLine NCDRC 212;*
- vi. Faqir Chand Gulati v Uppal Agencies Pvt Ltd (2008)10SCC 3;*
- vii. Imperia Structures Ltd. v. Anil Patni, (2020) 10 SCC 783;*
- viii. Emaar MGF Land Limited & Anr. v. Karnail Singh, 2014 SCC OnLine NCDRC 332;*
- ix. HMJ V R Krishna Iyyer in the decision of T. Arivandandam vs. T.V. Satyapal & Anr., 1977 AIR 2421;*
- x. Subash Chander Mahajan & Anr v. Parsynath Developers Ltd. Through Managing Director 360 2014 SCC OnLine NCDRC 11;*
- xi. Pioneer Urban Land and Infrastructure Ltd. v. Govindam Raghavan, (2019) 8 SCC 416;*
- xii. Central Inland Water Transport Corporation v. Brojo Nath Ganguly, AIR 1986 SC 1571.*

10. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned Counsels for the parties available.

11. The primary issues to be examined are whether the OP used substandard construction material? Whether the OP had the right to halt construction or take further steps based on the complainant's alleged failure to make timely payments, as stipulated in the agreement?

Whether the OP had obtained additional Rs. 8.35 lakhs as claimed by the complainant and whether he is entitled to its refund?

12. As regards the allegation that the construction work by the OP was substandard and there were deviations from the approved plan, it is the allegation of the complainant that substandard materials were used and the work did not meet the required quality standards. On the other hand, OP countered that the complainant was actively involved in overseeing the construction and raised no objections during its progress. As per agreement, he was required to supervise the construction and was in fact present during the construction and had the opportunity to raise any concerns at the time. It is the assertion of OP that no complaints were made about the construction quality until the legal dispute arose between the parties. Therefore, the contention of substandard work is unsubstantiated.

13. As regards the scope for OP to halt construction or take further steps based on the complainant's failure to make timely payments, as stipulated in the agreement, the complainant alleged that he made overpayment and thus sought a refund of Rs. 8.35 lakhs. On the other hand, the OP contended that the delay and disruption of the work was due to the complainant's failure to make timely payments. With respect to the right of the OP to halt construction due to non-payment, as per the agreement, the payments were scheduled at different phases of work. The OP contended that the complainant failed to meet these schedules and delayed the payment of Rs.2 lakhs, which should have been made before foundation was completed. The contract stipulated that if payments were not made as per schedule, the OP was entitled to suspend or stop work. Therefore, any stoppage or delay in construction would not amount to a deficiency in service but rather a consequence of the complainant's delay in payment as per schedule.

14. As regards whether the OP obtained additional Rs. 8.35 lakhs as claimed by the complainant and whether he is entitled to its refund, it is the claim of the complainant's that Rs. 8.35 lakhs was paid in excess to OP and that the OP is liable to refund this amount. The OP asserted that the total cost of construction, including the increase in area sought amounted to Rs.23,07,600/-. The letter issued by OP to complainant stating a reduced rate of Rs.1624 per Sq Ft was solely for facilitating his bank loan application, and it was not reduction in the construction cost. The OP maintained that the actual cost remained Rs. 23,07,600/- as agreed, and the excess payment claim of the complainant is unfounded. In this regard, the learned State Commission and the learned District Forum have gone into details of the facts of the case to appreciate the scope of work and payments made and considered that there has been some deficiency in service on the part of the OP. The District Forum vide order dated 29.01.2016 directed the complainant to deposit the balance amount as per agreement before the District Forum or in any Bank and intimate the OP. And the OP was directed to complete the remaining work within 4 months and, after completing the work, OP can apply for the deposited amount. If the OP failed to comply with the order, the complainant is entitled to seek release of deposited and OP was directed to pay Rs.5,00,000/- as compensation and the complainant was permitted to complete the work. Whereas, on Appeal by the complainant, the learned State Commission vide order dated 21.02.2019 directed the OP to refund a sum

of Rs.8.5 lacs collected in excess along with 8% interest from the date of filing of the complaint to the complainant. Thus, this Revision Petition.

15. Undisputedly, the agreement in question was entered into between the parties in the year 2009. The consideration that was paid towards a plot of land as well as construction of house for the complainant were part of one project. The learned State Commission considered the value of the site as Rs.90,000/- and the construction cost as Rs.3,00,000/- and thus, quantified the complainant liability towards OP as Rs.3,90,000/-. However, evidently, the issue in question is more complex than mere addition of both. The value of an undeveloped land/plot will always relatively less while the construction cost tends to be more consistent. As the project development progresses, while the construction cost remains generally stable, the land value tends to rise. Therefore, splitting of these two components of the project, fixing the rate of the land as of the year 2009 and direct for refund of Rs.8.35 lacs along with 8% interest from the date of filing of the complaint in the year 2011 tends to place the complainant to undue advantage. At the same time, undisputedly there was there was delay in the construction and deficiency in service by the OP.

16. After due consideration of the above deliberations as well as the entire facts and circumstances of the case, in my considered view the compensation awarded by learned State Commission vide order dated 21.02.2019 is excessive and, therefore, the same needs to be modified. The Petitioner/OP is directed to pay complainant Rs.5,00,000/- as lumpsum compensation within a period of one month from the date of this order. In the event of delay, the complainant shall be entitled for a simple interest @ 12% for such delayed period.

17. With the above directions, the Revision Petition No. 1302 of 2019 is disposed of.

18. All pending Applications, if any, are also disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER