

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION, MAHARASHTRA,
MUMBAI**

RBT/A/15/874 IN

Consumer Complaint No.331 of 2008

[Arisen out of Order dt.5/12/2014 in Lodging No.1601 of 2014]

1. Bank of Baroda
Through its Branch Manager
Branch office at-
C.P.C.Retail, 5th floor,
Baroda House,
Behind Dewan Shopping Centre,
S.V.Road, Jogeshwari (W),
Mumbai.
2. Bank of Baroda
Through its Branch Manager
Branch at-
Bank of Baroda
Saki Naka Branch,
Andheri(E),
Mumbai.

Appellant(s)

Versus

1. Mr. Jayprakash R. Kushwaha
R/at-E/217, Shree Dutt CHS Ltd.
Virar Road,
Nallasopara (E),
Tal. & Dist.Thane.
2. Mr.Rahul Lokhande
R/at-C/4, Rajhans Co.Op.Hsg.Soc.
Ltd.,
Navshakti Mitra Mandal,
Goarai II,
Borivali (W),
Mumbai 400 092.
3. The Chairman / Secretary
New Neil Aangan CHS Ltd.

Plot No.21, Central Park,
Nalasopara (E),
Tal. & Dist.Thane 401 209.

Respondent(s)

BEFORE:

Hon'ble Mr.Justice A.P.Bhangale, President

Hon'ble Mr. D.R.Shirasao, Judicial Member

PRESENT:

For the Advocate Mr. Prashant A.Shinde

Complainant(s):

For the

Opposite Party(s): None present

ORDER

Per Hon'ble Mr.D.R.Shirasao, Judicial Member-

[1] Being aggrieved by the Order passed by the Thane District Consumer Disputes Redressal Forum in consumer complaint No.331 of 2008 on 22/8/2014 directing the Opposite Party Nos. 1 and 2 to inform complainant in respect of his loan for purchase of house and to pay compensation of Rs.1,00,000/- to him and costs of litigation, Opposite Party Nos.1 and 2 have preferred this Appeal. Brief facts of the case are as under-

[2] Respondent No.1 Mr.Jayprakash R.Kushwaha filed complaint against Appellants and other Respondents for giving deficiency of service by them. He submitted that as he was in need of house he contacted Opposite Party No.3 Mr. Rahul Lokhande in respect of purchase of house. Opposite

Party No.3 agreed to sell flat bearing No.202 of New Neil Aangan Co.Op.Hsg.Society Ltd. , Nalasopara admeasuring 414 sq.ft. to complainant for total consideration of Rs.4 lakh. Complainant submitted that in that respect Opposite Party No.3 had executed registered agreement in his favour on 12/3/2007. He submitted that on the date of agreement he had given amount of Rs.87,000/- to the Opposite Party No.3 and rest of amount of Rs.3,13,000/- was to be given to the Opposite Party No.3 by obtaining loan from the bank. Complainant submitted that before execution of agreement he had approached to the Opposite Party No.1 for getting loan for purchase of flat. He had shown document of flat to the Opposite Party No.1 and they agreed to give house loan of Rs.3,13,000/- to the complainant. Complainant submitted that hence he executed agreement in respect of that flat with Opposite Party No.3 on 12/03/2007. He submitted that after execution of that agreement he had approached to the Opposite Party No.1 and had given application for giving house loan to him. He had filed necessary documents for that purpose along with application. He submitted that the Opposite Party No.1 had verified those documents and agreed to give loan of Rs.3,13,000/- to him. In that respect Opposite Party No.2 had given letter to the complainant on 12/4/2007. By that letter he had informed that cheque of amount of loan will be given to the complainant in the name of Opposite Party No.3. Complainant submitted that he had deposited process fees and amount required for mortgage of flat with bank to the Opposite Party No.1. Complainant submitted that after the process

was completed he had given application to the Opposite Party No.4 for giving no objection. Accordingly, Opposite Party No.2 had given no objection and had also transferred share certificate of Opposite Party No.3 in favour of complainant. Complainant submitted that he had deposited all those documents with the Opposite Party No.2. Complainant submitted that thereafter it was incumbent on Opposite Party Nos. 1 and 2 to give the cheque of house loan of Rs.3,13,000/- to the complainant in the name of Opposite Party No.3. Complainant submitted that however Opposite Party Nos. 1 and 2 failed to give the cheque of house loan to him on the pretext that his file of house loan is missing. Complainant submitted that hence he required to file complaint against Opposite Parties. Hence, he had prayed that Opposite Party Nos. 1 and 2 be directed to give the cheque of house loan to the complainant along with compensation and costs of litigation.

[3] Opposite Party Nos.1 and 2 contested the complaint by filing written version on record. However, they submitted that the no objection of society produced by the complainant is false and fabricated. It does not bear the signature of the President/Secretary of the society. Opposite Party No.4 had informed this fact to them. Hence, they submitted that loan cannot be given in respect of that flat to the complainant. They also submitted that the Opposite Party No.3 was not authorized to execute the agreement for sale in respect of that flat. Hence, they submitted that the title of the flat in respect of which house

loan was to be given was not clear. For all these reasons they submitted that complainant is not entitled for loan.

[4] Opposite Party No.3 also contested the complaint and submitted that all allegations made against him are false and he was authorized to sell that flat. He also submitted that because of the fault of Opposite Party Nos. 1 and 2 by not giving loan to the complainant he could not sell the flat to the complainant.

[5] Complaint was proceeded exparte against Opposite Party No.4.

[6] Considering the rival contentions of both the parties and evidence adduced on record by them and on hearing the argument of both the parties, the Ld. District Forum had come to conclusion that in respect of giving house loan to the complainant, Opposite Party Nos.1 and 2 had caused deficiency of service to the complainant. Hence, Ld. District Forum directed Opposite Party Nos. 1 and 2 to inform about status of house loan to be given to the complainant in respect of flat to him within 30 days from passing of order. At that time Ld. District Forum had also directed the Opposite Party Nos.1 and 2 for giving compensation of Rs.1,00,000/- and costs of litigation Rs.10,000/- to him. Being aggrieved by the same Opposite Party Nos. 1 and 2 have preferred this appeal. It appears that at the time of filing appeal, Appellant/Opposite Party Nos.1 and 2 had not removed the objections raised by the registry and hence this Commission had dismissed the appeal filed by the appellant by passing order on

5/12/2014. It appears that Opposite Party Nos. 1 and 2 had preferred revision petition No.1646 of 2015 before Hon'ble National Consumer Disputes Redressal Commission. Hon'ble National Commission by passing order on 15/7/2015 had granted further time to the Appellant for removal of objections by setting aside order passed by this Commission. Hence, Appeal filed by the Appellant was registered on removal of objection.

[7] Heard Ld. Advocate appearing for the Appellant. He submitted that the opposite Party No.3 was not authorized to sell that flat. His title on the flat was not clear. Moreover, the letter of transfer issued by the Opposite Party No.4 and produced by the complainant before them was false. Opposite Party No.4 had informed about the same to them. Hence, he submitted that as title of Opposite Party No.3 was defective and Appellant had not completed the procedure for transfer of flat in his name, he was not entitled to get loan in respect of that flat from Opposite Party Nos. 1 and 2. He submitted that however Ld. District Forum had not considered this fact and had directed the Opposite Party Nos.1 and 2 to consider the loan application of complainant and inform about the status of his loan application to him. He also submitted that at the same time Ld. District Forum had directed the Opposite Party Nos.1 and 2 to pay compensation of Rs.1,00,000/- and costs of litigation of Rs.10,000/- to the complainant. Hence, he submitted that order passed by the Ld. District Forum is not legal and correct and submitted that appeal be allowed and order

passed by the Ld. District Forum be set aside and complaint filed by the complainant be dismissed.

[8] None appeared for the Respondent. Hence, we had gone through the record of the case, documents filed on record and evidence adduced by the parties on record and decided the matter on merit.

[9] On perusal of record it has become clear that as complainant was in need of house he contacted the Opposite Party No.3 for purchase of flat. Opposite Party No.3 had agreed to sell flat No.202 of New Neil Aangan Co.Op. Hsg.Society Ltd., Nalasopara admeasuring 414 sq.ft. to complainant for total consideration of Rs.4 lakh. It appears that in that respect registered agreement had taken place in between Opposite Party No.3 and complainant on 12/3/2007. At the time of execution of agreement complainant had given amount of Rs.87,000/- to the Opposite Party No.3 and it was agreed that balance amount of consideration of Rs.3,13,000/- will be given by the complainant to the Opposite Party No.3 by obtaining loan from the bank. It is the contention of the complainant that before execution of this agreement he had already shown documents of flat to the Opposite Party No.1 and they had assured the complainant that house loan of Rs.3,13,000/- will be given to him for purchase of that flat. It is the contention of the complainant that he entered into an agreement in respect of the flat with Opposite Party No.3 on 12/3/2007. It is the contention of the complainant that thereafter he had given application for giving

loan for purchase of that flat by him to the Opposite Party No.1. At that time, he had filed all the necessary documents in respect of the flat alongwith application. He submitted that Opposite Party No.2 had verified all those documents and agreed to give loan of Rs.3,13,000/- to the complainant for purchase of that house. It is the contention of the complainant that in that respect Opposite Party No.2 had issued letter to him on 12/4/2007. The same is produced on record. He submitted that accordingly he had paid processing fee and amount for mortgage of flat with the bank to the Opposite Party No.2. It is the contention of the complainant that thereafter he had given application to the Opposite Party No.4 who is the society of that flat for giving no objection to purchase of that flat and to transfer share certificates in his name. It is the contention of complainant that accordingly opposite party No.4 had transferred share certificate in favour of complainant and had given no objection to him for purchase of that flat. It is the contention of complainant that he had produced all those documents to the Opposite party No.2. It is the contention of complainant that after giving all these documents it was incumbent on the Opposite Party Nos.1 and 2 to issue the cheque of loan amount to the complainant. It is the contention of complainant that however Opposite Party Nos.1 and 2 had not issued the same in his favour on the ground that the file of his house loan is missing. Hence, complainant was required to file complaint against Opposite Party Nos.1 and 2 by making Opposite Party Nos.3 and 4 as party to the proceeding. On perusal of record it appears that during the

pendency of case by filing written version on record Opposite Party Nos.1 and 2 had taken objection that title of Opposite Party No.3 on that flat is not clear and the letter given by the society giving no objection to the complainant for purchase of that flat is false and fabricated. It is their contention that Opposite Party No.4 has informed this fact to them. However, Opposite Party No.4 had not appeared before the Forum and had not contested the case. In absence of evidence of Opposite Party No.4 the contention of Opposite Party Nos.1 and 2 that letter given by the Opposite Party No.4 was false and fabricated cannot be accepted. Under such circumstances, the objection for not giving loan to the complainant by Opposite Party Nos. 1 and 2 was not proper. Irrespective of that the Ld. District Forum had directed the Opposite Party Nos.1 and 2 to reexamine the application of complainant for getting loan for purchase of that flat and informed about status of that application to him within 30 days from passing of order. On perusal of order passed by the Ld. District Forum it has become clear that the Ld.District Forum had given discretion to the Opposite Party Nos.1 and 2 to consider whether loan can be given to the complainant in respect of purchase of that flat. However, Ld. District Forum had only directed the Opposite Party Nos. 1 and 2 to inform decision taken by them to the complainant within 30 days from the passing of order. Looking to the facts and circumstances of the case we are of the opinion that the order passed by the Ld. District Forum appears to be legal and correct and needs no interference.

[10] It appears that the Ld. Advocate appearing for the Appellant has mainly contested the appeal on the ground that under such circumstances Opposite Party Nos.1 and 2 are not required to pay compensation of Rs.1,00,000/- to the complainant. However, we are of the opinion that contention of the Opposite Party Nos.1 and 2 in this respect cannot be accepted. We are of the opinion that as and when Opposite Party Nos.1 and 2 had come to know that title of Opposite Party No.3 is not clear and letter of transfer of flat given to them by the complainant is false and fabricated it was incumbent on Opposite Party Nos.1 and 2 to inform this fact to the complainant. However, complainant was required to wait for same and was required to file this complaint against Opposite Party Nos.1 and 2. It appears that on the contrary Opposite Party Nos.1 and 2 had not responded to the complainant on the pretext that house loan file of complainant is missing. Under such circumstances, we are of the opinion that there was deficiency in service given by the Opposite Party Nos.1 and 2 to the complainant and hence complainant is entitled to get compensation from Opposite Party Nos.1 and 2 along with costs of litigation. In such circumstances, we are of the opinion that order passed by the Ld. District Forum is legal and correct. Hence, appeal filed by the appellant is to be dismissed. Hence, we proceed to pass the following order-

ORDER

- 1] Appeal is hereby dismissed.

- 2] Impugned order passed by the Ld. District Forum stands confirmed.
- 3] Parties to bear their own costs.

One set of Appeal compilation be retained and rest be returned to the Appellant.

Certified copy of this order be supplied to both the parties free of cost.

Pronounced on

24th April, 2017.

[JUSTICE A.P.BHANGALE]

PRESIDENT

[D.R.SHIRASAO]

JUDICIAL MEMBER

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