

(2004) 01 NCDRC CK 0103

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**Case No:** None

KALPANA DUBE

APPELLANT

Vs

MAXWORTH TOWNSHIP LTD.

RESPONDENT

Date of Decision: Jan. 24, 2004**Citation:** 2004 2 CPJ 318**Hon'ble Judges:** Rumnita Mittal , Mahesh Chandra J.**Advocate:** Madhur Dadlani

Judgement

1. THE present complaint has been filed under Section 17 of the Consumer Protection Act, 1986 by Ms. Kalpana Dube alleging deficiency in service on the part of O.P. Nos. 1 to 3. THE case of the complainant is that she booked a plot-house in the Bannerghatta Project at Bangalore with the O.P. No. 1 on 29.4.1996. She also paid Rs. 25,000/- as earnest money vide cheque No. 141023 dated 29.4.1996 drawn on Syndicate Bank. This money was paid by the complainant at Delhi office of the O.P. and a receipt dated 20.5.1996 was issued by the O.P. THE complainant was also issued priority allotment No. (PAN) blr-1396 assuring registration as member of the scheme. THE complainant made all the payments vide various cheques as per payment schedule in the brochure issued by the O.P. THE O.P. assured the complainant that the possession of the house shall be delivered by the end of 1997. THE O.P. continued to send various updates regarding the acquiring of land, progress of the construction and various stages in which the project is progressing vide letter dated 2.12.1997. THE O.P. also informed the complainant that the foundation work in the project had been completed upto plinth level and that superstructure of the next 25 houses was underway. In letter dated 2.12.1997 the O.P. also informed that work towards water, electricity etc. was to begin in January, 1998 and work towards other amenities was to begin in April, 1998. According to the complainant by July, 1997 she had already paid Rs. 5,36,400/- to the O.P. out of the total value of Rs. 11,92,000/-. However, when the complainant visited Bangalore in the month of February, 1998, she found that the entire land was lying vacant with no construction at the site. She was shocked to learn that by that time even the land

for construction had not been acquired. She wrote to the O.P. enquiring about the progress of the construction work. THE O.P. replied that till September, 1998 they were not in a position to acquire the land and now they were in the process of construction work. THE O.P. also assured that registration process shall be completed by the end of September, 1998 and construction would be completed by December, 1998. THE complainant further stated that development progress and registration of property was extremely slow and since the complainant was in urgent need of the house, she preferred to withdraw from the scheme on 15.9.1998. She wrote to the O.P. to refund the deposited amount with interest. THE O.P. informed the complainant that refund would be made within a year. However, the deposited money of the complainant with interest was not refunded. On the other hand, the O.P. informed the complainant that house allotted to the complainant would be ready by September, 2000. However, the complainant insisted for the refund of the money but the same was not refunded. On the other hand the O.P. informed the complainant that Bhoomi Poojan at the project site was performed on 24.11.1999. In the month of March, 2000, the complainant again visited Bangalore and she found that there was no progress at all at the site even by that time and the O.P. had failed to refund the deposited amount. THE complainant sent a legal notice dated 13.11.2000 calling upon them to refund the amount with 18% interest. THE grievance of the complainant is that she booked the house in 1996. However, the construction work was not completed even by March, 2000. THE complainant having waited for such a long period, booked another flat in Delhi for Rs. 21,00,000/- and she has asserted that she had to pay additional amount of Rs. 9 lakhs on account of deficiency in service on the part of O.P. THE complainant also stated that she had booked this house in Delhi and also made all the payments at the Delhi office of the O.P., hence this Commission has jurisdiction to hear this case. THE complainant has claimed a refund of Rs. 5,36,000/- paid by her to the O.P. with 18% interest from August, 1997 alongwith cost of legal notice, litigation charges amounting to Rs. 11,000/-, compensation for mental agony and torture for Rs. 1,00,000/- and also difference in the cost of original house and the one booked by the complainant later for Rs. 9 lakhs. THE complainant thus claimed Rs. 19,14,356/- from the O.P. Besides filing of affidavit, the complainant has also filed following documents:

1. Copy of application dated 29.4.1996 (Annex. A) 2. Copy of receipt dated 20.5.1996 (Ann. B) 3. Copy of PAN Allotment No. (Ann. C Colly) 4. Copy of Brochure of customer details (Ann. D) 5. Copy of letter dated 9.1.1997 (Ann E) 6. Copy of letters dated 2.12.1997 and 17.2.1997 (Ann. F Colly) 7. Copy of letter dated 4.11.1999 (Ann. G) 8. Copy of letter dated 4.9.1998 (Ann. H) 9. Copy of letters dated 15.9.1998 and 15.8.2000 (Ann. I colly) 10. Copy of letter dated 13.11.1998 (Ann. J) 11. Copy of letters dated 15.11.1999 and 17.11.1999 (Ann. K Colly) 12. Copy of letter dated 25.11.1999 and photo (Ann. L Colly) 13. Copy of legal notice dated 3.11.2000 (Ann. M) 14. Copy of envelope and AD cards (Ann N. Colly).

2. DURING the pendency of the complaint, the name of O.P. No. 1 M/s. Maxworth Township Pvt. Ltd. was deleted from the array of the parties at the request of the complainant vide order dated 17.5.2001. The O.P. Nos. 2 and 3 neither appeared in response to notices sent nor have filed any reply/written version in spite of opportunities given. Hence the case is proceeded ex parte against them vide order dated 2.9.2002.

We have heard the learned Counsel for the complainant and have also carefully considered evidence on record. The complainant in pursuance of the proposal of the O.P. booked a house in Bannerghatta Project, Bangalore to be constructed by the O.P. She was assured that the possession of the house will be delivered by the end of 1997. However, the O.P. even did not acquire the land and gave false information and promises to the complainant regarding the progress of the work. In fact even the land was not acquired by the O.P. till September, 1998. The complainant on her visit to Bangalore found that the entire land of the project was lying vacant and no construction was done in the project, even though the O.P. has informed vide letter dated 2.12.1997 that foundation work was in progress in the project and the foundation work had been completed upto the plinth level and that the superstructure of the next 25 houses was underway. It is thus apparent from the various letters of the O.P. that the O.P. has given false information to the complainant and has made false promises to deliver the possession of the house by December, 1997 whereas even the land was not acquired till September, 1998. When the complainant found that the progress of the construction work was very slow, she decided to withdraw from the project and requested for refund of the deposited amount with interest and also cancellation of allotment. However, the O.P. failed to refund the amount with interest. On the other hand the O.P. continued to write to the complainant about the progress of the work and also informed that Bhoomipoojan was performed at the project site on 24.11.1999. However, this was also a false information given by the O.P. because when the complainant visited Bangalore again in the month of March, 2000, she found that there was no progress at all at the site even by that time. From the evidence on record, it appears that the O.P. booked the house of the complainant under the assurance that possession of the house will be delivered to the complainant by December, 1997. But by that time, the O.P. failed to acquire the land and no construction work was started even by March, 2000. Thus the O.P. was certainly deficient in service. The O.P. has failed to perform its obligation in time and given false promises and information to the complainant. Hence in our view the O.P. Nos. 2 and 3 are liable for deficiency in service. The O.Ps. even failed to refund the money deposited by the complainant which is another instance of deficiency in service.

The affidavit of the complainant in this behalf and the entire evidence filed on behalf of the complainant remain unrebutted as the O.P. never cared to appear before this Commission nor filed any reply. Hence affidavit of the complainant remains unrebutted.

3. IN view of the above, we have found the O.Ps. liable for deficiency in service and hence the O.Ps. are directed to refund the amount of Rs. 5,36,000/- deposited by the complainant alongwith 15% interest from August, 1997 till payment. The O.Ps. are also directed to pay Rs. 5,000/- as cost of litigation to the complainant who has been pursuing this case for the last three years. Since interest is sufficient compensation, no separate compensation for mental agony or harassment is being awarded. There is no ground to allow the difference in the cost of the original house and the one booked by the complainant later, as claimed by the complainant. The above order should be complied with within 30 days from the date of receipt failing which the complainant shall be free to take action under Section 25/27 of the Act as the complainant may be advised. The above complaint stands disposed of in above terms. Complaint disposed of.