
(2002) 03 NCDRC CK 0014

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

ANIL KUMAR ADYA

APPELLANT

Vs

MAXWORTH
ORCHARDS (INDIA)
LTD.

RESPONDENT

Date of Decision: March 19, 2002

Citation: 2003 1 CPJ 28

Hon'ble Judges: C.M.Nayar , Moksh Mahajan J.

Final Decision: Application disposed of

Judgement

1. IN a widely circulated advertisement in various newspapers, the respondent namely, Maxworth Orchards gave publicity to its scheme/project known as Max-Savale Mango Plus Nursery Project launched somewhere in the month of December, 1994 - January, 1995. As per the scheme plots of various measurements were offered to the public. While cost of one acre was stated to be Rs. 96,000/-, for half an acre it was Rs. 50,000/- in a place located at Village Savale, Taluka Maval, District Pune. Lured by the scheme the three applicants namely, Shri Anil Adya, Namita Adya and Nitasha Adya applied for the plots of one acre each and paid Rs. 90,000/- towards the application money on 11.2.1995 vide Receipt No. 4091834 dated 16.2.1995 (Annexure AW-1/B). A further sum of Rs. 90,000/- was paid for additional acres of land in the name of the applicant along with his two minor daughters (Annexure AW-1/C). The remaining amount was to be paid in quarterly instalments over a period of 18 months. Another sum of Rs. 30,000/- was paid for purchasing one acre of land (at Exhibits AW-1/D). Thus all plots were booked in the same area. Subsequently the respondent offered a discount of 3% on the investments made by the applicants. IN total, an amount of Rs. 9,73,288/- (against Rs. 10,88,000/- claimed) is stated to have been paid as acknowledged in Annexure A-9. As per the information given to the applicants on 13.2.1996 project at Savale could not materialise because of the disputes with the land owners and was to be shifted to other district namely, Rajgarh, in respect of which the agreement with the applicant was to be executed in March, 1996 and the trees to be planted in July/September, 1996. The

aforesaid site again was required to be shifted to Kakal due to some unforeseen circumstances and the new project was to be offered at the same rates. The respondent was to pay interest at the rate of 18% per annum till the date of re-allocation which was scheduled for 30.3.1996. The return schedule was to commence three years after the completion of planting i.e. July-September, 1996. On 19.6.1996 the respondent sent copies of the maintenance agreement in respect of each plot booked by the applicant which was duly signed. As per the maintenance agreement, the respondent was to develop the scheduled property into an orchard by rendering various services and maintaining the same. The payment made by the applicant covered the cost of conveying the scheduled property in favour of the orchard owner, developing the same, planting the required saplings and management cost, etc. The maintenance agreement also provided (Clause 25) that the respondent was obliged to buy-back the property from the orchard owner subject to the condition that the same was under the maintenance of the respondent continuously from the beginning. The orchard owner was also to sell the scheduled property on his own giving 30 days advance notice to Maxworth. IN case of breach of agreement the orchard owner could terminate the agreement in which eventuality the amount was to be refunded along with 18% interest thereon. Despite the applicants having paid the stated amount of Rs. 10,88,400/- (at the rate of Rs. 1,36,000/- discounted price per acre), the respondent is contended to have neither executed the sale deed nor given the yield as promised. As per the information received by the applicant even the Kakal project had failed to take off and no progress was made despite several promises made. The only information received through the communication dated 14.8.1997 from the respondent was that due to adverse market conditions the project could not take off. The applicant corresponded with the respondent regarding the latest position of the project but the replies received were stated to be vague. IN the communication dated 30.9.1997, the respondent was to help customers to find a new customer for buying their investment through resale. Subsequent to that there was no communication received from the respondent. This led to the filing of the compensation application before the Commission with the prayer that for unfair and restrictive trade practices adopted and indulged in by the respondent within the meaning of Section 2(o)(ii) of the Monopolies and Restrictive Trade Practices Act, 1969 (for brief the Act), the respondent be asked to pay a sum of Rs. 10,88,400/- along with interest at the rate of 24% w.e.f. 5.10.1998 - the date of cancellation of the agreement till the date of realisation. A further sum of Rs. 25,000/- was also claimed towards litigation charges. It also claimed a sum of Rs. 10,00,000/- as damages on account of loss suffered, in addition to Rs. 1,52,326/- towards interest till the date of filing an application.

2. ON the facts as stated in the application, a notice under Section 12B of the Act was sent to the respondent on all the three addresses given in the compensation application. Despite service of the notice, the proceedings were not represented by the respondent either in person or through the authorised representative or any Advocate. Accordingly, the respondent was set ex parte vide order dated 10.1.2001. The applicants filed affidavit by way of evidence along with the supporting documents.

Admittedly, on the representations of the respondent, the applicant paid a sum of Rs. 9,73,288/- (as per applicant 10,48,400/-) as duly evidenced by the acknowledgement receipt available on record. The promises made included the sale of property in favour of the orchard owner for payment of consideration amount as listed in the brochure, development of orchard including conducting of the survey, demarcation and other related works on behalf of orchard, installation of borewells, open wells and another water points, etc. on the scheduled property for yielding necessary crops. The maintenance cost of second and third year was to be recovered from the sale of the crops raised in the scheduled property. The deed of sale was to be executed within the stipulated period and the possession of the scheduled property was to be given by the orchard owner to the respondent though only for a limited purpose of developing. There was a provision for buy-back of scheduled property. Thus tall promises along with sufficient yield on the property were sufficient to allure the applicant to invest their hard-earned money in the said project. It is relevant to note that right from the year 1996 the respondent had not acquired the land, which is evident from the fact, that project at Savale did not materialise. As promised, even the land at Rajgarh and at Kakal could not be acquired. These facts are sufficient to show the mala fide intention on the part of the respondent. Not only the promises initially made were not kept even the same were repeated subsequently in order to retain the invested amount. It is a case where the facts clearly speak for themselves that without acquiring the land, the respondent misled the applicants in investing their amounts in their projects which was not there. Non-defence of the respondent further establishes the act of unfair trade practice on the part of the respondent. The respondent by manipulating conditions of delivery has imposed unjustified cost on the applicant. Accordingly, we are of the considered view that in the premises, the applicant is entitled to compensation. We, therefore, direct the respondent to refund the amount paid (after verification) along with interest @ 12% per annum from the dates of payment of instalments till the refund of the total amount. The applicant's claim in respect of the compensation of Rs. 10,00,000/- in respect of the damages is not payable in view of the decision of the Hon'ble Supreme Court of India in the case of Ghaziabad Development Authority v. Union of India & Anr., reported in II (2000) CPJ 1 (SC)=IV (2000) SLT 654=2000 CTJ 205 (SC) (MRTPC). So would be the case for interest at Rs. 1,52,326/-. The respondent cannot be held responsible for delay in filing an application directly attributable to the applicant. However, a cost of Rs. 5,000/- towards legal proceedings is awarded on the facts and the circumstances of the case. The respondent is, therefore, directed to implement the order within six weeks of its receipt of the same and file an affidavit of compliance within two weeks thereafter. Application

disposed of.