

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

"An aware consumer is an asset to the nation"

Website : www.advantageconsumer.com

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ADVANTAGE - VI

Queries & Answers through the Web

(www.advantageconsumer.com) is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

National Commission denies the Claims of Flat purchasers, who had not exercised due diligence in interpreting the terms of the "Subvention Scheme".

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 63 OF 2020

AKSHAY GUPTA & ANR.

C-302, Gundecha Gardens, C-Wing, Bombay Gas Company,
Lal Baug,
Mumbai - 400 012

.....Complainant(s)

Versus

ICICI BANK LIMITED & 2 ORS.

Through its Managing Director & CEO, Sandeep Bakshi,
Registered Office at Landmark, Race Course Circle,
Vadodara - 390 007. Gujarat

.....Opp. Party(s)

BEFORE:

HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING MEMBER
HON'BLE DR. INDER JIT SINGH, MEMBER

Dated : 02 Jan 2023

ORDER

1. Heard Ms. Shilpa Gamnani, Advocate and other advocates in all the above complaints, for the complainants, Ms. Chetna Bhalla, Advocate, for opposite party-1 and Mr. S.B. Prabhavalkar, Advocate, for opposite parties-2 and 3.

2. In above complaints, same issues of facts and law have been raised against same opposite parties as such all the complaints are decided by a common judgment. For appreciating the controversy, facts of CC/63/2020 are mentioned. Relevant facts in above complaints are given in the chart below:-

CC NO.	Name of the complainant	Flat No.	Date of sanction of Loan	Date of Disbursement	Amount of Loan
CC/63/2020	Akshay Gupta & Garima Mishra	Flat No.410, B-Wing, 4 th floor, Raj Infinia,	21.08.2013	30.08.2013	Rs.12334541/-
CC/64/2020	Nagraj Mahadev Shetti	Flat No.1008, B-Wing, 10 th floor, Raj Infinia,	19.07.2013	24.07.2013	Rs.12799364/-
CC/172/2020	Pritam Kumar Patnaik & Bandita Panda	Flat No.414, 4 th floor, C- Wing Raj Infinia,	07.08.2013	31.07.2013	Rs.17862159/-
CC/174/2020	Muringassril Jacob Kuruvilla & Mrs. Susan George	Flat No.A-602, 6 th floor, A- Wing Raj Infinia,	28.08.2013	31.08.2013	Rs.17706142/-
CC/175/2020	Jignesh Tapiawala & Mrs. Shital Tapiawala	Flat No.C-1714, 4 th floor, C- Wing Raj Infinia,	07.09.2013	16.09.2013	Rs.17742859/-
CC/177/2020	Shirley Coutinho & Philomena Countinho	Flat No.1505, 15 th floor, B- Wing Raj Infinia.	07.09.2013	07.09.2013	Rs.13909600/-
CC/255/2020	Ravi Agrawal & Swati Agrawal	Flat No.C-814, 8 th floor, Raj Infinia,	20.07.2013	17.09.2013	Rs.18100531/-

3. Akshay Gupta and Garima Mishra have filed CC/63/2020 for quashing Loan Recall Notice dated 19.09.2019, issued by ICICI Bank Limited (Opposite Party-1) and any other relief, which is deemed fit and proper, in the facts and circumstances of the case.

4. The complainants stated that ICICI Bank Limited (Opposite Party-1) (the bank) was a banking company, incorporated under the Companies Act, 1956 and engaged in the business of providing loans against property, home loans, financial assistance etc. to the general public. Rajesh Lifespaces Private Limited and Rajsanket Realty Limited (opposite parties-2 and 3) (the builders) were the companies, registered under the Companies Act, 1956 and engaged in business of development and construction of housing project and selling its unit to the prospective buyers. The builders launched a group housing project in the name of “Raj Infinia”, at CTS No.307/66/A, village Valnai, Taluqa Borivali, Mumbai, in 2013 and made wide publicity of its amenities and facilities. They advertised that the flats could be purchased under “subvention scheme”. On inquiry, Mr. Rananjay Singh, the authorised representatives of the builders and Mr. Gaurav Wig, an officer of the bank, informed that the project was jointly offered by the bank and the builders and as per “subvention scheme”, 20% of sale consideration had to pay by the buyer and 80% by the bank; and the builders would pay EMI on the bank loan, for a period of 36 months or till offer of possession, whichever was later. “Subvention scheme” was available only on the home loan taken from the bank. Mr. Afsar Sheikh, Sr. Branch Sales Manager-Mortgages of the bank, vide email dated 14.06.2013, informed that the bank was funding the project “Raj Infinia” in the ratio of 80:20. On inquiry, Mr. Vishal Doshi informed that possession would be delivered in the year 2016. The builders executed an agreement for sale dated 17.08.2013, in favour of the complainants, stating in clause-9 that interest on the bank loan would be borne by the builder till handover of the possession. Allured with “subvention scheme”, the complainants applied for home loan. The bank sanctioned Rs.13078217/- on 21.08.2013 as home loan. The bank asked to

sign blank documents including standard format of loan agreement (Facility Agreement) dated 21.08.2013. In clauses-8 and 9 of this agreement (relating to due date of commencement of EMI and payment of first EMI), “PD” (Possession Date) was mentioned. The bank issued letter dated 07.09.2013, for disbursing Rs.12334541/- to the builders and directly gave that amount to the builders. Reserve Bank of India, vide Circular DBOD.BP.BC. No.51/08.12.015/2013-14 dated 03.09.2013, issued advisory to all the schedule commercial banks that housing loans to individuals should be closely linked to the stages of construction of the housing project as the banks run disproportionately higher exposures with concomitant risks of diversion of funds under 80:20 or 75:25 schemes. Opposite party-3 gave an email dated 30.05.2019, stating their inability to pay EMI on account to their poor financial condition. The bank issued a letter to the complainants dated 13.07.2019 that EMI of Rs.312070/- was due for more than 60 days till 01.07.2019 and required the complainants to pay it within 7 days. The builders did not abide with the timelines as mentioned in agreement. The bank issued Loan Recall Notice dated 19.09.2019 to the complainants. The bank issued notice under Section 138(b) of Negotiable Instruments Act, 1881 along with Section 25 of the Payment and Settlement Systems Act, 2007 to the complainants dated 11.10.2019 and 25.11.2019. The complainants replied these notices on 02.12.2019. The complainants, vide email dated 18.12.2019, requested the bank to stop coercive proceeding against the complainants but the bank did not respond. Then this complaint was filed on 15.01.2020, alleging unfair trade practice and violation of RBI’s guidelines.

5. ICICI Bank Ltd. (the bank) filed its written reply on 26.08.2020 and contested the complaint. The bank stated that the complainants approached the bank in July 2013, for grant of home loan. On the basis of the documents and credential submitted by the complainants, the bank sanctioned the home loan of Rs.13078217/- and Facility Agreement dated 21.08.2013 was executed between the parties. Simultaneously the complainants also executed an “Undertaking” on 21.08.2013, in which, it has been clearly mentioned in case of non-payment and untimely payment of money by the developer to ICICI bank during the period of 36 months or till the date of completion of the project or thereafter the borrowers agree and undertake to pay the said money to the bank promptly without any protest or demur, as and when required by the bank. The complainants are literate persons. They read and fully understood the terms and conditions of the Facility Agreement and the Undertaking. Out of aforesaid sanctioned loan, Rs.12334541/- was disbursed in accordance with the instructions received from the complainants. The loan was repayable in 240 months along with interest in monthly instalments. Interest was fixed @ 10% per annum under the adjustable rate which I-Base plus margin of 0.65%. It was also agreed that till such time entire loan amount is not disbursed, there was only payment of Pre-EMI. In view of the terms of the Facility Agreement and the Undertaking given by the complainants, the complainants are liable to pay EMI/loan amount in case builder failed to pay it. When the builder stopped payment of EMI, then letter was given to the complainants on 13.07.2019, for paying EMI. However, the complainants, instead of depositing the EMI, raised a protest against the demand. The bank, therefore, issued loan recall notice of 19.09.2019 was issued. It has been denied that the bank had any agreement with the developers for promotion of the project. The complainants directly approached to the bank for sanction of the loan. The complainants were defaulters; therefore, the loan recall notice was issued on 19.09.2019. The circular of Reserve Bank of India of 03.09.2013 was issued subsequent to the sanction of the loan to the complainants, as such, it is not applicable to this loan. The loan was sanctioned on the application of the complainants and disbursed on their instructions, the bank is entitled to realise the loan amount as per Facility Agreement and Undertaking. There was neither unfair trade practice nor deficiency in service by the bank. The complaint is liable to be dismissed.

6. The complainants filed Rejoinder Reply on 21.09.2020, Affidavit of Evidence of Akshay Gupta and documentary evidence on 20.01.2021. Opposite party-1 filed documentary evidence through E-dakhil on 01.03.2021 and same document has been filed through IA/2256/2021, which is allowed and the documents are taken on record.

7. We have considered the arguments of the counsel for the parties and examined the record. The complainants took plea that there was an agreement between the bank and the builders for promotion of the project “Raj Infinia”. This fact has been denied by the bank. The complainants filed a copy of the Memorandum of Understanding dated 01.07.2013, executed between Sanket International Ltd. And ICICI Bank Limited. A perusal of this document does not indicate that the builder had taken liability of paying EMI till delivery of possession. Clause 9 of sale agreement dated 17.08.2013, between the complainants and

builders, mentioned that the promoters had entered into an agreement with ICICI Bank Ltd. To promote subvention scheme popularly known as 20:80 for the benefit of their purchasers. It only means that bank was ready to give loan to the extent of 80% of the cost of the flat under subvention scheme. It does not mean that the liability of the complainants to repay the loan/EMI was absolved till delivery of possession as there was no such contract between the bank and the complainants. As such, the argument in this respect cannot be accepted.

8. The complainants relied upon email dated 23.07.2013 and 28.08.2013. In these e-mails, it has been mentioned that “This loan is under developer subvention scheme for the period of 36 months or possession, whichever is later.” In this sentence, it has been clearly mentioned that the loan is under developer subvention scheme and not under any scheme of the bank. Similar sentence is incorporated in the agreement to sale between the complainants and the builder. The builders paid pre-EMI till April 2019. Under the Facility Agreement and Undertaking, the complainants are bound to pay EMI, if the builders stop payment.

9. It is not disputed that the complainants took the home loan and executed Facility Agreement. They are liable to repay it in accordance with Facility Agreement, for which the complainants also executed an Undertaking, in which they took liability to pay the EMI if the builder stopped payment of it. Therefore, the complainants cannot deny the payment of EMI on the ground that under Sale Agreement the builders were liable to pay EMI till the date of delivery of the possession. Admittedly, the complainants withdrew from the Sale Agreement in 2018, therefore, there was no question of delivery of possession to them.

10. So far as the Circular of Reserve Bank of India dated 03.09.2013 is concerned, it is advisory in nature and will have prospective application. The loan of the complainants was already sanctioned and Facility Agreement as well as Undertaking were executed on 21.08.2013. The circular will have no effect on it.

ORDER

The complaints have no merit and are dismissed.

Short weightment is a major issue faced while doing online shopping for fruits and vegetables.

B. Vaidyanathan

These days, especially in metro cities, households are accustomed to doing online shopping, even for fruits and vegetables. This has become the norm since the second quarter of 2021, after the Covid pandemic necessitated minimising exposure to crowded markets, shopping malls, etc. Online portals like **Big Basket** saw a big surge in demand and customers at that time had to wait for even a couple of days to get a delivery slot. Many established online shopping portals like **Flipkart**, **Amazon** jumped the bandwagon of online supply of Fruits and Vegetables. Already **Flipkart** has reduced its business in this area (christened as **Flipkart Quick**), for reasons which are not clear. In Chennai, one stopped seeing the “**Flipkart Quick**”, since Oct. 2022. **Amazon** is marketing fruits and vegetables under its banner “**Fresh**”.

More choice means higher competition and is no doubt welcome for an ordinary consumer and it is a dream come true, and he is the king in the marketplace. But only an aware and equipped consumer can dictate his terms, and must be willing to do the homework, rather than getting carried away by the glitter and attractive enticements that are on offer.



Pic.-1 (Red Bananas)

The case in point is that even the established brands noted as above are having issues while doing retail sales. There are basically 3 issues affecting the consumers at large. First and foremost is the pricing. Since, pricing is being publicised and readily available while ordering, the consumer is well informed, and hence it is upto him to purchase or not, as random cross checking with the wholesale prices, available in the media will enable him to evaluate whether what is being charged is fair or not.



Pic.-2 (Karpooravalli Bananas)

Second issue and an important one is the quality of the stuff supplied and its packing. If one is a regular shopper, he will be able to assess the same, after a couple of orders. Incidentally, as this author has experienced, while some items are more or less good with different sellers, some or not the same.

In this digital era, an historical issue is astonishingly, is still a major issue, which these renowned companies are still unable to take care. They are still having difficulties in supplying these perishable commodities as invoiced/billed. To their credit, they are promptly refunding the full cost of the billed item. But how many are having the time or wherewithal to weigh each item that are supplied. Pic.-1 shows the “Red Bananas” supplied by **Big Basket**. As per their variable weight policy, they billed the same as 1.18 kg, whereas the actual was only 1.15 kg (1.146 kg). They refunded the cost of the entire quantity of bananas billed. That demonstrates their honesty. But how many individuals would have made such a claim is a pertinent question to ponder.

Similar issue was there with the item supplied by **Amazon** (Pic.-2 Karpooravalli Bananas). As against 500 gm that was billed, supplied only 429 gm. On complaining about that variation, they promptly refunded the cost of the entire quantity of bananas billed. I have stated the above two as examples, for demonstrating the malady.

It is no surprise then, that I could realise the entire cost of the digital weighing machine, within 45 days. 😊

It is time to ponder for all the Companies, as to how to enhance the culture of the people at large, to make them more trustworthy in whatever they do? Having potential is one thing, but working as per that potential is another thing. ■

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Consumer Protection Council, Rourkela is a registered voluntary organization, espousing the cause of the consumer. To a great extent, for its sustenance it depends on the good will of its donors like you. We solicit your support for sustaining the multifarious activities of the council. Donation to the council is eligible for tax exemption under Section : 80-G(5) (iv) of the IT Act. Donation may please be contributed through cash or crossed cheque / DD, drawn in favour of “ **Consumer Protection Council, Rourkela**”.

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