

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 129 OF 2017

1. MANOJ MADHUSUDHANAN

OFFICE AT: "LANDMARK", RACE COURSE CIRCLE,
VADODARA - 390007

.....Complainant(s)

Versus

1. ICICI BANK LTD. & ANR.

(THROUGH ITS AUTHORIZED OFFICER) "LANDMARK",
RACE COURSE CIRCLE,
VADODARA-390007.

2. M/S. BLUE DART EXPRESS LTD.

(THROUGH ITS AUTHORIZED REPRESENTATIVE) BLUE
DART CENTRE, SAHAR AIRPORT ROAD,
ANDHERI (EAST), MUMBAI-400099

.....Opp.Party(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

FOR THE COMPLAINANT : MR SWTANK SHANTANU, MS SHIFA AND
MR PRATAP SHANKER, ADVOCATES

FOR THE OPP. PARTY : FOR OPPOSITE PARTY NO.1 MR ANAND SHANKAR JHA,
ADVOCATE WITH
MR ABHILEKH TIWARI, ADVOCATE
FOR OPPOSITE PARTY NO.2 MR SUMIT GOEL, ADVOCATE
WITH
MR ADVADITYA SHARMA, ADVOCATE

Dated : 31 August 2023

ORDER

1. This consumer complaint has been filed under section 21(a)(i) of the Consumer Protection Act, 1986 (in short, the 'Act') against the opposite parties on the ground that opposite party no. 1/bank was guilty of deficiency in service in having lost the original title documents pertaining to his property which were deposited with the opposite party no. 1 from whom a housing loan was obtained by the complainant.

2. The complainant states that the opposite party no.1 sanctioned a housing loan of Rs 1,86,00,000/- on 11.04.2016 for the purchase of site no. 474 B, Ideal Homes Cooperative Building Society Ltd., Sector B, Ideal Homes Township, Kenchenahalli, Rajarajeshwari Nagar, Bangalore to be repaid over 20 years at a monthly EMI of Rs 1,72,769.50 per month. Upon execution of the Sale Deed before the Sub Registrar, Rajarajeshwari Nagar on 22.04.2016, the following papers were retained in original by the opposite party 1/bank as security: (i) Registered Sale Deed dated 22.04.2016 bearing registration no. 303/2016-17; (ii) Registered

Sale Deed dated 24.03.2016 bearing registration no. 7380/2015-16; (iii) Possession Certificate issued by Ideal Homes Society; (iv) BDA Khata; (v) BBMP Khata Certificate; (vi) Tax Paid Receipts; (vii) Khata Endorsement issued by the then CMC, Pattangere, Rajarajeshwari Nagar; and (viii) Encumbrance Certificate. No scanned or true copies were provided by the opposite party 1 to the complainant for which the complainant filed a complaint bearing SR No. 418321343 dated 14.06.2016. On 21.06.2016 the opposite party 1/bank informed the complainant that they were initiating the process of tracing the misplaced original documents pertaining to the property. On 14.07.2016 representatives of the opposite party 1 informed the complainant that the papers had been lost in transit from Bangalore to its central storage facility in Hyderabad by opposite party no. 2, a courier company. On 08.07.2016 the opposite party conveyed to the complainant that they were deferring the EMIs due till recovery of the original documents and that a legal notice had been served upon opposite party 2 on 18.06.2016. Complainant submits that opposite party 2 accepted its negligence and apologized by email dated 25.05.2016 to opposite party 1 and that the opposing party 1 pointed out to opposite party 2 that documents had been misplaced by it on previous occasions as well. It is also stated that negligence of opposite party 1 is established since it is admitted that only the complainant's documents were lost from the packet sent to Hyderabad for which it sought the complainant's consent to file a police complaint and paper publication. Consent of the complainant was also sought to recreate the documents and an offer of compensation of two EMIs was made while it issued a legal notice to the opposite party 2 seeking compensation of Rs 2,50,00,000/-.

3. Since the opposite party failed to respond to its efforts to resolve the issue, the complainant approached the Banking Ombudsman on 14.08.2016 which directed the opposite party 1 on 22.09.2016 to issue a duplicate copy of the lost documents, publish a public notice regarding the loss and pay the complainant Rs 25,000/- towards deficiency in service. A legal notice was served to the opposite party 1 by the complainant on 21.09.2016 which was replied on 24.10.2016 by them negating the previous acceptance of their mistake. While the order of the Ombudsman was complied with by opposite party 1, complainant states that the publication was limited to only Bangalore whereas the papers were lost in Hyderabad. Therefore, it is alleged that opposite party was extremely negligent with regard to the original papers pertaining to his property that is valued at Rs 5,00,00,000/- and that copies of documents cannot replace the sanctity of the original documents. The complainant is before us with the prayer to:

- a) direct the opposite parties to trace the original documents of the property of the complainant, and/or;
- b) direct the opposite parties to pay an amount of Rs 5,00,00,000/- towards compensation for mental agony and loss caused to the complainant for misplacing the original documents as well as towards causing deficiency of service on part of the respondents while carrying out their duties and being negligent in their conduct, and/or;
- c) direct the opposite parties to pay interest @ 12% per annum from the date of misplacement/loss of the original documents till the date of filing of the complaint, and/or;

d) pass such other and further order or orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case

4. The opposite parties resisted the complaint by way of replies. Opposite party 1 stated that the complaint was not maintainable since opposite party no.2 was attempting to wriggle out of its liability for mishandling and misplacing documents of the complainants. The opposite party no.1 states that the sale deed was executed on 22.04.2016 in favour of the complainant which was duly registered before the Office of Sub-Registrar, Jayanagar, Rajeshwari Nagar, Bangalore. It was stated that the original documents from the complainant were received by opposite party no.1 and thereafter were sent by it to its storage facility at Hyderabad via Blue Dart Courier, opposite party no. 2 on 26.04.2016. The said consignment was delivered at the storage facility of opposite party no.1 on 29.04.2016. On verification of the contents, the consignment pertaining to the complainant was found missing. It was further noticed that the consignment weighed only 7 kg instead of original 10 kg. It was stated by the learned counsel for the opposite party no.1 that they had been pursuing the matter with opposite part no.2 to retrieve the missing documents of the complainant since 29.04.2016. Finally, on 25.05.2016, opposite party no.2 admitted that the said consignment/ documents were lost in transit and despite their bests efforts, could not be traced. On 20.07.2016, the opposite party no.2 – Blue Dart Express, issued an apology letter to ICICI Bank Ltd. Opposite party no.1 submits that opposite party no.2 lodged an FIR with Cyberabad Police Station, Hyderabad in this regard. Learned counsel for opposite party no.1 stated that the Service Provider Agreement dated 01.04.2011 was placed on record by opposite party no.2; however, it has consciously omitted to present all the relevant clauses of the service provider agreement.

5. Opposite party 2 in his reply contended that complaint filed against it was not maintainable as there was no privity of contract between the complainant and opposite party no.2 and the liability, if any, can only rest with opposite party no.1. It also states that the relationship between ICICI Bank and the service provider is on a 'Principal Agent' basis. Opposite party no.2 states that opposite party no.1 neither disclosed the contents of the consignment nor its value or importance at the time of dispatching the consignment. However, the consignment was delivered intact and in a sealed condition at Hyderabad to opposite party no.1 on 29.04.2016. The opposite party no.1 accepted the consignment without any remarks or protest. It was further mentioned that the complainant had also filed a complaint before the Banking Ombudsman and that as per the order of the Banking Ombudsman, the opposite party no.1 has paid a compensation of Rs.25,000/- to the complainant which was accepted by the complainant on 28.09.2016. It is contended that this Commission does not have the jurisdiction to entertain the present complaint in view of the fact that the total value of the property cannot be reckoned for deciding the pecuniary jurisdiction, particularly where the compensation is founded upon the loss of property documents. He also relied upon ***Bharathi Knitting Company vs DHL Worldwide Express Courier Division of Airfreight Ltd.***, (1996) 4 SCC 704 that contract liability was limited as per the terms of the contract.

6. Complainant in his rejoinder denied the contentions of the opposite parties and asserted that the loss of the original documents by the opposite party no 1 to whom they were handed

over puts him at a financial loss as the value of his property bought against a loan from opposite party 1 will be adversely impacted due to the title not being supported by original documents.

7. Parties led their evidence and filed their short synopses of arguments. I have heard the learned counsel for the parties and considered the material on record.

8. Learned counsel for the complainant argued that he was a 'consumer' under the Act *qua* opposite party 1/bank having availed of banking services of obtaining a bank loan from it. The loss of the original papers by it amounts to deficiency in service. It is contended that opposite party 1 having been guilty of deficiency of service has also been hypocritical in claiming compensation of Rs 2,50,00,000/- from opposite party 2 while offering to compensate the complainant through waiver of 2 EMIs payable by the complainant. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Charan Singh Vs. Healing Touch Hospital & Ors.* 2000 SAR (Civil) 935 which held that

“consumer forums are required to make an attempt to serve ends of justice so that compensation is awarded, in an established case, which not only serves the purpose of recompensing the individual but also at the same time aims to bring about a qualitative change in the attitude of the service provider.”

Complainant also relies upon this Commission's order in *Pooja Pincha & Anr. Vs. State Bank of India*, IV (2016) CPJ 28 (NC) that held that

“The loss of documents of ownership is not venial and trivial matter, the wearer knows where the shoe pinched and the Bank is terribly remiss in discharge of its duties.”

Reliance was also placed upon this Commission's orders in:

- a. *Citi Bank & Ors. Vs. Ramesh KalyanDurg & Ors.* MANU/CF/0180/2016 wherein it was held that the complainant would be compensated, publication cost shall be borne by the bank and the bank will get certified copies of all documents at its cost apart from suitably compensating and indemnifying the complainant if he suffers in the future due to the loss of the documents; and
- b. *Bank of India Vs. Mustafa Ibrahim Nadiadwala*, MANU/CF/0809/2016 which held that the bank is liable to ay compensation to the complainant because the value of the property is bound to be affected if the original title deed is lost by the bank.

9. Complainant therefore averred that the loss by the opposite party 1 of the original property papers establishing his title to the property amounts to deficiency in service. It was contended that his title to the property based on the recreated papers would be weak in terms of clear title which would affect its value should he wish to place the property on the real estate market or use it is a collateral.

10. On behalf of the opposite party no. 1, it was argued that (i) the complaint did not lie as the complainant has not given any justification for quantifying the loss to the tune of Rs.5.00

crores. It has been stated that the compensation amount has been grossly inflated and fabricated in order to file the complaint before this Commission. It has been stated that the alleged market value of the property to be Rs.5.00 crores was without any basis and has deliberately omitted to file the valuation report. Learned counsel for opposite party no.1 submits that the value of the property in question even if it is more than a crore, then also it cannot be basis to decide the pecuniary jurisdiction of this Commission. The learned counsel for opposite party no.1 submits that the matter pertains to loss of title documents and not the loss of any property. Further, the complainant has not filed any document, valuation report, assessment report to justify the actual value of the title papers. Learned counsel for opposite party no.1 has further stated that the case was decided by the Banking Ombudsman on 22.09.2016 and the opposite party no.1 has duly complied with all the directions passed by the Banking Ombudsman. Hence, the learned counsel for opposite party no .1 prays that the present complaint be dismissed.

11. Learned counsel for opposite party no. 2 argued that (i) the complainant's claim of compensation of Rs 5,00,00,000/- with 12% interest from the date of misplacement of his original title papers is not justifiable since the property was valued at Rs 1,95,25,825/- on 22.04.2016 when it was mortgaged. Some compensation has also been awarded by the Ombudsman. The claim is therefore without basis. (ii) As per its Service Provider Agreement with opposite party 1, its liability for any loss/damage in transit of security documents is capped at Rs 100/- and for non-security document at Rs 50/- as per Clause 7. (iii) As per clause 1 of Annexure I to the Agreement between opposite parties, opposite party no 1 is the admitted 'principal' of opposite party 2 which is a courier company, therefore, the complaint does not lie against it either in law or on facts and also because there is no privity of contract between them (iv) Complainant is also not a 'consumer' *qua* the opposite party 2 under the Consumer Protection Act. (v) Opposite party 1 had not substantiated its claim that the original documents in question of the complainant had been handed over to opposite party 2 for transportation to Hyderabad from Bangalore since there was no record of the documents handed over. Opposite party 2 had already denied their liability in reply to the legal notice sent. (vi) The claim of opposite party 1 was false and an attempt to shift its liability to opposite party 2.

12. From the facts of the instant case and consideration of the material on record and averments of the parties it is manifest that the opposite party 1 was responsible for the custody and security of the original title documents pertaining to the housing loan sanctioned by it to the complainant. The contention of opposite party 1 that the complaint against it was misplaced since the papers were lost by opposite party 2 and hence any liability must be borne by it and that since the matter has been decided by the Ombudsman the complaint did not lie against it cannot be sustained for the reason that the papers were in the custody of the Bank in view of the plot having been mortgaged to it and the ombudsman having provided liberty to the complainant to seek further remedied if so desired. Its contention that the claim was excessive as no basis for claiming Rs 5,00,00,000/- had been provided and that this was not the value of the property which was in possession of the complainant can also not be sustained. It is pertinent to note that opposite party 1's own legal notice to the opposite party 2 had sought damages of Rs 2,50,00,000/-. The claim that the complainant is not entitled to damages is not justifiable as deficiency in service on its part is writ large. Opposite party 2's averment that it

was only an agent of the opposite party 1, the principal, and was bound by the terms of the Service Level Agreement which defined the relationship as per Clause 1 and liabilities as per clause 7 have been considered. This argument is patently based upon a contractual agreement which binds both parties. The contention that the complaint should rightly be directed against opposite party 1 since there was a clear delineation of liabilities cannot be faulted with.

13. This contention is valid, and it cannot be argued, as opposite party 1 would do, that the complainant is not impacted financially since the property is in his possession. The legal title of the complainant does stand compromised on account of the loss of the original documents by opposite party 1. Seeking compensation on the ground of deficiency in service is, therefore, a legitimate claim. The claim of compensation from opposite party 1 is also legitimate since the papers were in his custody under the terms of the loan provided by opposite party 1/bank. The contention that the order of the Ombudsman does not prevent his filing of the complaint is also valid since the order itself provides him liberty to do so.

14. As regards the compensation sought by the complainant is concerned, it is manifest that the property was mortgaged for a sum of Rs.1,95,25,825/- on 22.04.2016 to opposite party 1. Even if some appreciation of value is considered, it would not be of the order of Rs.5,00,00,000/- given the short duration of time between the mortgage date and the filing of the complaint. This claim is, therefore, evidently inflated. The damages of Rs.2,50,00,000/- claimed by the opposite party 1 from opposite party 2 appears to be more realistic. However, the issue is not of fixing a value to a piece of real estate which the complainant is in possession of. Rather, it is one of *compensation* for the deficiency in service and of indemnifying the complaint against any future loss. The compensation paid by the opposite party 1 in terms of the order of the Banking Ombudsman is required to be factored in while deciding the same.

15. In view of the fact that the safe custody of the original title documents to the property were the liability of opposite party 1 and that opposite party 2's liabilities are limited in view of clauses 1 and 7 of the agreement between the opposite parties, the complaint squarely lies against opposite party 1. The liability of the opposite party 1 is manifest in the loss of the documents. It cannot seek to shift the liability to its agent, the opposite party 2. The deficiency in service has also been held as established by the Banking Ombudsman. In view of the facts and circumstances of the case, the complaint has merit and is liable to succeed against opposite party 1 for the reasons set out in the preceding paragraphs.

16. Accordingly, the complaint is partly allowed and opposite party no.1 is directed to:

- (i) obtain, at its cost, all the reconstructed and duly certified copies of the documents handed over by the complainant as security at the time of registration of the sale deed on 22.04.2016 for the housing loan sanctioned by opposite party 1 in respect of the property situated at site no. 474 B, Ideal Homes Cooperative Building Society Ltd., Sector B, Ideal Homes Township, Kenchenahalli, Rajarajeshwari Nagar, Bangalore and hand over true and certified copies thereof to the complainant;

- (ii) issue an indemnity bond in favour of the complainant regarding these documents;
- (iii) pay Rs.25,00,000/- to the complainant towards compensation after factoring in the compensation awarded by the Banking Ombudsman;
- (iv) Pay the complainant Rs.50,000/- as litigation cost; and
- (v) Comply with this order within 8 weeks failing which the opposite party shall be liable to pay interest at 12% per annum till realization.

17. The above directions shall be complied with within 8 weeks of this order failing which the amount shall be paid with simple interest @ 9% from the date of this order till realization.

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**SUBHASH CHANDRA
PRESIDING MEMBER**