

## 'CARIAPPA FOUNDATION FAILED TO HONOUR ITS COMMITMENT'

As a consumer you may be familiar with the words 'we are not responsible for damages due to circumstances beyond our control'. Almost all service providers make it a point to include this clause so that they can take shelter for their negligence and deficiencies. But can consumers, who have invested their hard earned money in a housing project, be denied justice because of this clause?

Thanks to the Karnataka State Consumer Disputes Redressal Commission for having delivered judgement holding a service provider guilty of deficiency in service, when it tried to protect its skin under the clause "circumstances beyond its control". Disposing an appeal by the Filed Marshal K.M.Cariappa Foundation, the Commission has said that the foundation has failed to honour its commitment in providing plots to its members.

Army service personnel, both in service and retired all over the country invested substantial amounts in the Filed Marashal Cariappa Foundation, a registered trust which undertook to provide residential plots to its members. A number of army personnel paid membership fees, registration fees and deposited huge sums to get a plot.

However even after several years the Foundation could sail through the acquisition of land to form a layout and distribute the sites. The foundation found itself in litigation with landowners, developers and ultimately with the government. Having lost all the avenues the depositors approached the consumer forum for justice.

To cut short the story, the case came up before the State Commission wherein the Foundation put forth some irrelevant arguments, quoted unconnected decisions and tried to capitalize on the clause 'circumstances beyond their control'. Firstly, the foundation argued that the trust is run on a 'no-profit-no loss' basis and hence the complainants cannot be said to have availed or hired the services of the foundation. As a result they are not 'consumers' as contemplated in the Consumer Protection Act.

Secondly, it was argued that there was no negligence on the part of the foundation in forming layouts or providing plots. The delay was due to litigation with landowners, developers etc., which was beyond the control of the foundation and consumers cannot be paid compensation.

But the Commission took a different view and held the foundation was not carrying its activities on a 'no-profit-no-loss' basis. It was collecting donations, service charges, Registration fees etc from the public. The foundation had its own office staff, legal advisers etc., to whom salaries were paid. The commission came to the conclusion that all these factors must have been taken into account by the trust while fixing the price of the plot. In view of this the commission rejected the contention of the trust that it is run on 'no-profit-no-loss' basis.

The foundation also tried to defend its negligence on the pretext that there was a change in the attitude of the government in the matter of acquisition of land culminating in the appointment of arbitrators. Huge sums were paid to the landowners and hence there is delay in formation of layout and distribution of plots. This, the foundation termed as beyond its control. But the commission has rejected this argument and has said that this cannot be pressed into service as a shield against the deficiency in service.

Further the commission has observed that if on account of want of effective plan, want of imagination and a caution approach, a person lands himself in a quandary, the same cannot be pleaded as a circumstance beyond its control. It has said that a person who has undertaken a contractual obligation is required to see that there is no fault, shortcoming, inadequacy in quality, nature and the manner of performance in that undertaking.

It is surprising to note that the foundation which has included a clause for refund of amount in its regulations has failed to do so under the guise of 'circumstances beyond control'. One of the rules framed by the foundation provides that applicants have an option to claim refund of the entire amount in the event of the foundation not being able to allot a site to the applicants, either due to over subscription for any other reason and there is an undertaking that the whole amount will be paid within 90 days.

It is time depositors start claiming their deposits based on this judgement, if they wish to do so. They can even produce a copy of the balance sheet of the Trust to the commission so that the amount of fixed deposit is made public through which their money can be taken back.

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