# AKSHAY GUPTA & ANR. V. ICICI BANK LIMITED & 2 ORS.

1. AKSHAY GUPTA & ANR.
C-302, Gundecha Gardens, C-Wing, Bombay Gas Company, Lal Baug,
Mumbai – 400 012
2. GARIMA MISHRA
C-302, Gundecha Gardens, C-Wing, Bombay Gas Company, Lal Baug,
Mumbai – 400 012

……..Complainant(s)

Versus

1. ICICI BANK LIMITED & 2 ORS.
Through its Managing Diretor & CEO, Sandeep Bakshi,
Registered Office at Landmark, Race Course Circle,
Vadodara – 390 007
Gujarat
2. RAJESH LIFESPACES PVT. LTD.
139, Seksaria Chambers, Second Floor, Nagindas Master Road, Fort,
Mumbai – 400 023
Maharashtra
3. RAJSANKET REALTY LTD.
(Earlier Known as Sanket International Ltd.), 139, Seksaria Chambers, Second Floor, Nagindas Master Road, Fort,
Mumbai – 400 023
Maharashtra

……..Opp.Party(s)

**Case No: CONSUMER CASE NO. 63 OF 2020**

1. PRITAM KUMAR PATNAIK & ORS.

……..Complainant(s)

Versus

1. ICICI BANK LTD. & ORS.
Through its Managing Director & CEO, Mr. Sandeep Bakshi
Registered Office; landmark, Race Course Circle,
Vadodara, -390007,
Gujarat
2. Rajesh Lifespaces Private Limited,
139, Seksaria Chambers, Second Floor, Nagindas Master Road,
Fort,
Mumbai-400023
MAHARASHTRA
3. Rajsanket Realty Ltd.

……..Opp.Party(s)

(Earlier Known As Sanket Internation Ltd. 139, Seksaria Chambers, Second Floor, nagindas Master Road, Fort,
Mumbai-400023
MAHARASHTRA
4. Also at; ICICI BANK, LIMITED
Through its Managing Director & CEO, Mr. Sandeep Bakshi,
Corporate Office; ICICI Bank Towers, Bandra Kurla Complex,
Mumbai-400053

**Case No: CONSUMER CASE NO. 172 OF 2020**

1. MURINGASSRIL JACOB KURUVILLA & ANR.

……..Complainant(s)

Versus

1. ICICI BANK LTD. & ORS.

……..Opp.Party(s)

**Case No: CONSUMER CASE NO. 174 OF 2020**

1. JIGNESH TAPIAWALA & ANR.

……..Complainant(s)

Versus

1. ICICI BANK LTD. & ORS.

……..Opp.Party(s)

**Case No: CONSUMER CASE NO. 175 OF 2020**

1. SHIRLEY COUTINHO & ANR.

……..Complainant(s)

Versus

1. ICICI BANK & ORS.

……..Opp.Party(s)

**Case No: CONSUMER CASE NO. 177 OF 2020**

1. RAVI AGRAWAL & ANR.

……..Complainant(s)

Versus

1. ICICI BANK LIMITED & 2 ORS.
THROUGH ITS MANAGING DIRECTOR & CEO REGD
OFFICE AT LANDMARK, RACE3 COURSE
CIRCLE,VADODARA-390007, GUJARAT
2. RAJESH LIFESPACES PRIVATE LIMITED
139, SEKSARIA CHAMBERS SECOND FLOOR, NAGINDAS
MASTER ROAD, FORT, MUMBAI-400023, MAHARASHTRA
3. RAJSANKET REALTY LTD.
139, SEKSARIA CHAMBERS SECOND FLOOR, NAGINDAS
MASTER ROAD, FORT, MUMBAI-400023, MAHARASHTRA

……..Opp.Party(s)

**Case No: CONSUMER CASE NO. 255 OF 2020**

1. NAGRAJ MAHADEV SHETTI

……..Complainant(s)

Versus

1. ICICI BANK LIMITED & 2 ORS.
THROUGH ITS MANAGING DIRECTOR & CEO REGD
OFFICE AT LANDMARK, RACE COURSE CIRCLE,
VADODARA-390007, GUJARAT

……..Opp.Party(s)

2. RAJESH LIFESPACES PRIVATE LIMITED
139, SEKSARIA CHAMBERS, SECOND FLOOR, NAGINDAS
MASTER ROAD, FORT, MUMBAI-400023, MAHARASHTRA
3. RAJSANKET REALTY LTD.
(EARLIER KNOWN AS SANKET INTERNATIONAL
LTD.)139, SEKSARIA

**Case No: CONSUMER CASE NO. 64 OF 2020**

**Date of Judgement: 02 Jan 2023**

**Judges:**

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

**For the Complainant** : Ms. Shilpa Gamnani, Advocate
**For the Opp.Party** : **For Opposite-Party-1** : Ms. Chetna Bhalla, Advocate Mr. Kartik Bhalla, Advocate
**For Opposite-Party-2 & 3** : Mr. S.B. Prabhavalkar, Advocate

***Facts***

***Complainants Akshay Gupta and Garima Mishra booked a flat (No. 410, B-Wing, 4th floor) in "Raj Infinia" housing project developed by builders Rajesh Lifespaces Pvt Ltd and Rajsanket Realty Ltd (OP 2 & 3). The project was promoted under a "subvention scheme" wherein 20% of flat cost was to be paid***

*upfront and 80% as home loan from ICICI Bank (OP 1). As per scheme, builders were to pay the EMI on home loan for 36 months or till possession, whichever was later. Based on the scheme, complainants took a home loan of Rs. 1.23 crores from ICICI Bank. Loan agreement and undertaking were signed by complainants. Builders stopped paying EMI in May 2019 citing financial difficulties. ICICI Bank then demanded complainants to pay the EMI as per the loan agreement and issued a loan recall notice on failure to pay EMI. Hence, the complaint to quash the loan recall notice on grounds of unfair trade practice by the bank.*

***Court's Opinions***

*There was no agreement between bank and builders to promote the project or for payment of EMI. The scheme was by builders only. As per loan agreement and undertaking, complainants were liable to pay EMI on builder's failure. RBI circular dated 03.09.2013 being advisory and prospective could not impact complainants' loan sanctioned on 21.08.2013. Withdrawal from project by complainants in 2018 ended question of possession delivery. Thus, bank was rightly demanding EMI from complainants; no case of unfair trade practice made out.*

***Arguments by Complainants***

*There was an arrangement between bank and builders to promote the project under subvention scheme. As per scheme, builders were to pay EMI till possession. RBI circular made linking of loan to construction stages mandatory. Bank wrongly recalled loan and demanded EMI despite builder's responsibility to pay EMI as per clause 9 of Flat Buyer's Agreement.*

***Arguments by Opposite Parties***

*No arrangement between bank and builders for payment of EMI. Complainants liable to pay on builder's default as per loan agreement and undertaking. RBI circular prospective, not applicable to existing loans. Loan sanctioned on complainants' application; disbursed as per their instructions. Entitled to recover as per agreement.*

***Sections***

***Section 138(b) of Negotiable Instruments Act; Section 25 of Payment and Settlement Systems Act***

***Referred Laws***

***RBI Circular DBOD.BP.BC.No.51/08.12.015/2013-14 dated 03.09.2013***

**Download Court Copy: https://dreamlaw.in/wp-content/uploads/2024/01/1-4.pdf**

**Full Text of Judgment:**

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, BWing, 4th floor, Raj Infinia | 21.08.2013 | 30.08.2013 | Rs.12334541/- |
| CC/64/2020 | Nagraj Mahadev Shetti | Flat No.1008,10th floor, B-Wing Raj Infinia, | 19.07.2013 | 24.07.2013 | Rs.12799364/- |
| CC/172/2020 | Pritam Kumar Patnaik & Bandita Panda | Flat No.414, 4th 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, AWing Raj Infinia, | 28.08.2013 | 31.08.2013 | Rs.17706142/- |
| CC/175/2020 | Jignesh Tapiawala & Mrs. Shital Tapiawala | Flat No.C1714, 4th floor, C- Wing Raj Infinia | 07.09.2013 | 16.09.2013 | Rs.17742859/- |
| CC/177/2020 | Shirley Coutinho & Philomena Countinho | Flat No.1505, 15th 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) were 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.