

AKSHAY GUPTA & ANR. vs. ICICI BANK LIMITED & 2 ORS.

Akshay Gupta & Anr. v. ICICI Bank Ltd. & 2 Ors.

Akshay Gupta & Anr.

.....Complainant(s)

ICICI Bank Pvt. Ltd. & 2 Ors.

.....Opp. Party(s)

Case No. : 63 OF 2020

Date of judgement:

Judges-

- Justice Ram Surat Ram Maurya
- Dr. Inder Jit Singh

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 took home loans from ICICI Bank for buying flats in “Raj Infinia” project under 20:80 subvention scheme.*
- Builders were paying the EMI under subvention scheme for 36 months or offer of possession.*
- Builders stopped paying EMI after April 2019 due to financial difficulties.*

- ICICI Bank issued demand notices to complainants for payment of EMI.
- Complainants filed complaints against the bank and builders alleging deficiency of service.

Court's Opinion:

- There was no agreement between bank and complainants that builders will pay EMI till possession.
- As per facility agreement and undertaking by complainants, they are liable to pay EMI if builders default.
- Complainants cannot abstain from paying EMI on the ground of terms in sale agreement with builders.
- RBI circular dated 03.09.2013 being advisory and issued after these agreements has no applicability.
- No deficiency of service or unfair trade practice is made out against the bank.

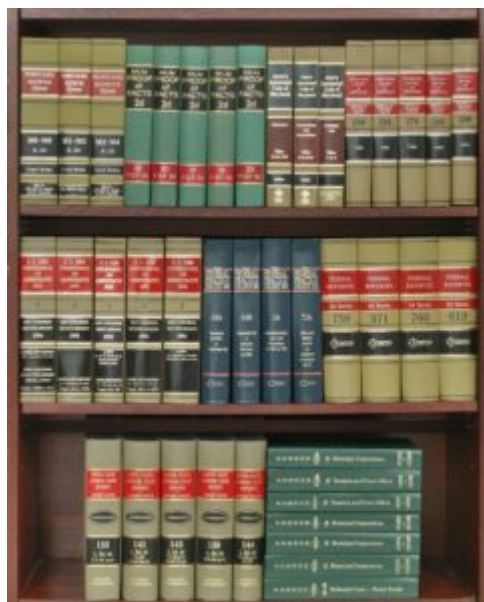
Sections Referred:

- Section 138(b) of Negotiable Instruments Act
- Section 25 of Payment and Settlement Systems Act 2007

Laws Referred:

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

So in short, the court dismissed the complaints holding the complainants liable to pay the EMI as per their agreements



with the bank.

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Court

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Full Text of Judgement:

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, 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, 6th 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, 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, 8th 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.

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