

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 919 OF 2018

1. SNEHASIS NANDAComplainant(s)
Versus
1. M/S. CITICORP FINANCE (INDIA) LIMITED~Opp.Party(s)

BEFORE:

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

For the Complainant : Mr. Snehasis Nanda,
Complainant in person
For the Opp.Party : Mr. Gaurav Khanna, Advocate

Dated : 19 Jan 2023

ORDER

DR.INDER JIT SINGH, MEMBER

1. The present Consumer Complaint (CC) has been filed by the Complainant against the opposite party as detailed above, *inter alia* praying for directions to OP to pay compensation on various counts due to loss caused to the Complainant due to non-payment of balance Rs.13.12 lacs to the complainant under the alleged tripartite agreement dated 09.02.2008.
2. Vide order dated 06.09.2018, the said complaint was dismissed at the pre- admission stage by the Commission on the ground that there was no dealing of any nature between OP and the complainant and no services provided to him and hence complainant cannot be said to be a consumer within the meaning of Consumer Protection Act, 1986. Review application no. 326/2018 seeking review of the order dated 06.09.2018 was also dismissed vide order dated 20.09.2018. Aggrieved by the order of the commission, the complainant approached Hon'ble Supreme Court. Hon'ble Supreme Court vide order dated 06.09.2019, allowed the appeal, set aside the order of the Commission and restored the matter back to the file of Commission for deciding in accordance with law. While disposing off the said appeal, Hon'ble Supreme Court inter alia made following observations:-

Learned counsel for the appellant invited attention to the following documents:

- I. Memorandum of Understanding dated 09.02.2008 between the appellant and one Mr. Mubarak Vahid Patel for sale of Flat No. 701, B-wing, 7th Floor Riddhi Siddhi Heritage, Plot No. 56 & 57, Sector-19, Airoli, Navi Mumbai.

The Recital in this agreement states that the amount of Rs. 31 lakhs was to be raised by way of loan from the respondent, M/s Citi Financial Consumer Finance India Ltd. on the basis of one Tripartite Agreement dated 09.02.2008.

It was, therefore, emphasized that there was a Tripartite Agreement between the parties which was entered into on 09.02.2008.

- II. A copy of the Agreement dated 12.02.2008 between the appellant and said Mubarak Vahid Patel and then recitals therefrom; and,
- III. The indemnity Bond dated 10.04.2008 where the document is stated to be executed in favour of the respondent herein and one of the recitals in the indemnity bond was to the following effect:

"And whereas the executant No.2 acknowledge that the terms of this bond shall be in addition to and not in contradiction to the terms and conditions of the Tripartite Agreement dated 09.02.2008 as entered into between the executant No. 1, executant No.2 and CitiFinancial."

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The Documents referred to above prima facie do show and support the case of the appellant. The matter shall of course be gone into and if there are submissions to the contrary from the other side, they will also be considered before arriving at the final decision. However, the National Commission ought not to have disposed of the matter at the admission stage.
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We have considered the matter only from the perspective whether prima facie it is evident that the appellant is a consumer or not. The entire matter has to be gone into and our prima facie view shall not debar any of the parties to submit material and prove it to the contrary. The entirety of the matter shall be gone into by the National Commission on merits at the appropriate stages.

3. Accordingly notice was issued to the OP on 21.11.2019.

4. During the hearing on 24.08.2022, the complainant stated that there was an agreement of sale of flat in dispute between the complainant and Mr. Mubarak Vahid Patel. Mr. Vahid Patel applied for sanction of the loan of the total sale consideration which was sanctioned by M/s Citicorp Finance (India) Ltd. to him. Thereafter, a tripartite agreement was executed between the complainant, Mr. Mubarak Vahid Patel and M/s Citicorp Finance (India) Ltd. On the basis of that tripartite agreement, part of the loan amount was directly paid to ICICI Bank, financier of the complainant and part of the loan amount which was payable to the complainant, was never paid to him. This complaint has been filed in respect of that amount. The Commission on hearing both sides on this day observed as following:-

“Although the OP prima facie denied for execution tripartite agreement between the parties but we are of the opinion that without there being any agreement between the parties, no loan could have been sanctioned and part of it could have been disbursed to ICICI Bank. Counsel for the opposite party may take specific instructions of the bank in this respect as in the case of simple denial, adverse inference would be drawn against him and file an affidavit to this effect serving a copy of it to the complainant.”

However, till date, no affidavit was filed by the OP in this regard

5. It is averred/stated in the complaint that:-

- i. That the complainant purchased a flat on 30.05.2006 and full amount was paid to the builder on 31.05.2006 named M/S Riddhi Siddhi Enterprises. Situated in Sector 19, Airoli, Navi Mumbai, Dist. Thane and was allotted flat No. 701, on the 7 Floor, B Wing, Plot no. 56 & 57 with a carpet area of 44.732 sq.mt. and built up area of 53.678 sq.mt. A possession letter dated 11.06.2007 was issued. Copy of agreement for sale dated 30.05.2006 was filed by the complainant. The complainant availed housing loan of Rs.17,64,644/- from ICICI Bank, Malad, East Mumbai branch.
- ii. That the complainant lost his job in Jan, 2008 and decided to sell the flat to start business in hometown at Cuttack and on 1 or 2 February Mr. Mubarak Vahid Patel approached the complainant to purchase flat for a consideration of amount of Rs. 32 lakhs. Mr. Patel requested the complainant to find out pending remaining amount of complainant's home loan for making agreement papers ready on that basis. That on 9th February, complainant entered into one MOU with Mr. Patel for selling flat and signed one tripartite agreement paper after collecting one post-dated cheque dated 12.02.2008 and on that basis the sale agreement was registered at sub registrar office at Airoli on 12 February 2008 for a consideration of 32 lakhs after depositing cheque of 1 lakh towards advance in complainant bank account. That Mr. Patel approached OP CitiFinancial Consumer Finance India Ltd. for financing housing loan. Copy of MOU dated 09.02.2008 has been submitted by the complainant, which makes a mention that out of total agreed consideration of Rs. 32 lakhs, Rs. 1 lakh will be paid through a post dated cheque dated 12.02.2008 and Rs. 31 lakhs will be by raising loan from M/s Citi Financial Consumer Finance India Ltd. on the basis of one tripartite Agreement dated 09.02.2008. Copy of Agreement for sale dated 12.02.2008 has also been filed by the complainant. As per the Agreement, balance of Rs. 31 lakhs was agreed to be paid by raising loan from bank/financial institution within 45 days from the date of agreement. The agreement further mentions that vendor (the complainant) has already mortgaged the said flat with ICICI Bank against the housing loan and still a sum of Rs. 17,87,763.40 is payable. Therefore, the purchaser's (Mr. M.V. Patel) loan availing bank shall directly pay/ transfer these arrears to M/s ICICI Bank Ltd. to nullify the loan A/C of the vendor **and the purchaser's loan availing bank shall pay the remaining amount to the vendor.** On receipt of full consideration/ payment from the purchaser/transferee, the vendor/ transferor shall hand over the vacant, peaceful possession of the said flat to the purchaser/ transferee and sign the share transfer forms and all the other relevant forms, undertakings and documents.
- iii. That OP through their one of representative Mr. Ashish Dangre approached the complainant on 27th March, 2008 for verification of details of documents as well as to know status of said flat. After verification of details, OP assured complainant to release payment as per sale agreement details mentioned in registered paper. Few days after acceptance of Registered Sale Agreement Documents on 10.04.2008 the OP wanted complainant to sign some other agreement papers and indemnity bond without filling blank spaces which the complainant refused. Copy of Tripartite Agreement dated 09.02.2008 has been filed by the complainant. The agreement, existence of which is denied by the OP, is purported to have been signed between the complainant, Sh. Mubarak Patel, the purchaser of the flat and the OP. It appears that the complainant and Mr. Patel, after signing the agreement, submitted the same to OP for their signature, but the status of its having signed by OP remains unknown in the absence of any affidavit filed by OP in pursuance to order dated 24.08.2022. Complainant also filed copy of Indemnity bond dated 10.04.2008 signed by complainant and Mr. Patel in favour of OP, which has many blanks. A copy of cheque dated 14.04.2008 for Rs. 17,80,000 issued by OP in favour of ICICI Bank has also been filed by the Complainant and subsequently ICICI Bank vide its letter dated 24.04.2008 confirmed that complainant's housing loan has been repaid in full.
- iv. On the basis of tripartite agreement and registered sale agreement, OP released part payment of Rs. 17,80,000 on 15.04.2008 in complainant's home loan account name to get the original property documents of complainant, mortgaged for taking home loan from M/s ICICI Bank. From the record produced by OP, the copy of home loan agreement was registered on 28.02.2008. The OP issued a cheque in the name of complainant and then handed over to him. NOC was issued in the name of OP and it has been mentioned that total amount as per sale agreement is to be paid by OP. After this, the OP started denying of having involvement with dealings. Complainant sent legal notice to OP about releasing the due amount of Rs. 13.20 lakhs, after receiving it by OP the complainant was threatened by OP and stopped communicating with complainant. Vide letter dated 12.05.2008, addressed to OP, Riddhi Siddhi Heritage Cooperations Housing Society issued permission to mortgage the said flat. Complainant has also submitted copies of the communication with Mr. Ashish Dangle, who in his mail dated 12.05.2008 to the complainant has stated that once the complainant gives NOC from the society in their format, they will disburse the remaining amount.
- v. OP has cheated complainant through conspiracy by utilizing the purchaser Mr. Patel and made complainant to suffer, by disposing off the property of complainant through Mr. Patel by handing over original title property documents of complainant to Mr. Patel in 2009. The complainant had approached different forums for resolving issue since 2008, before filing Writ Petition in Hon'ble High Court of Odisha in 2017, as the complainant failed to get any satisfactory response from other forums. Complainant has filed copies of his communications with OP. As per the letter dated 14.11.2012 and 22.01.2013 OP informed complainant that Mr. M.V. Patel is their customer and there is an agreement between Mr. Patel and OP and as per privacy theme, OP will refrain from giving customer information to a third party.

6. OP in their written statement/reply stated that :-

- i. That the complainant and Mr. Patel entered into MOU dated 09.02.2008 and an agreement to sell dated 12.02.2008 by virtue of which the property was to be sold to Mr. Patel against a sale consideration of Rs. 32,00,000 out of which Rs. 1,00,000 was paid in advance by Mr. Patel. The remaining amount was to be raised by Mr. Patel by availing loan from OP on the basis of alleged tripartite agreement dated 09.02.2008 entered between complainant, Mr. Patel and OP.
- ii. On 14.04.2008 a cheque amounting to Rs. 17,80,000 was issued in favour of ICICI Bank for securing original title documents of property. On 02.05.2008, complainant submitted original documents to OP including No Dues Certificate dated 26.04.2008 from ICICI Bank and informed OP to release remaining amount. The complainant was informed by OP on 28.05.2020 to contact Mr. Patel with regard to information/details regarding payment of remaining amount. Being aggrieved by the non- receipt of said amount, the complainant lodged complaints before various statutory and regulatory bodies and later approached the High Court of Orissa vide Writ petition seeking direction to OP to release remaining amount but it was dismissed.
- iii. On 16.04.2018 the complainant preferred the present complaint before this Commission seeking disbursement of the remaining amount from OP. That the allegations and assertions made by complainant are false, misleading and suffers infirmities. That the complainant failed to disclose under which legal/ contractual or other right it is entitled to relief claimed, there is no contract, tripartite agreement between complainant and OP. That the complainant is not a consumer as under Consumer protection Act, as there is no privity of contract between OP and complainant. That the complaint is barred by limitation as the alleged cause of action arose on 07.08.2008 and the consumer complaint filed on 16.04.2018 after a delay of 10 years. That the cause of action if any arises is only against Mr. Patel and not OP, the complaint deserves to be dismissed on grounds of misjoinder of parties and non- joinder of necessary and proper parties.
- iv. The complainant is a habitual litigator as he has filed petitions in almost every statutory and regulatory bodies, however none of the forums found any strength or merit in said allegations against OP. That the OP made a payment of Rs. 17,80,000 to ICICI Bank directly was to secure chain documents i.e original title deeds of the said property. The complainant needs to approach borrower who was made neither a party in litigation before this Commission nor in any of complaints filed by complainant. The complaint has been filed in an attempt to retain pecuniary jurisdiction of this Hon'ble Commission and failed to provide any document to support the relief as to how the value of land has increased by 10 times since 2008.

7. Evidence by way of affidavit and Rejoinder was filed by the complainant. Affidavit of evidence was filed by the OP broadly on the lines of averments made in the complaint. In his rejoinder, the complainant stated that it is admitted by the OP that they were aware of the fact about original documents of the property related to Complainant being mortgaged in ICICI Bank. Then how can OP process the home loan of any other person, who does not have any right over the property, without any consent of the title holder of the property or any sale purchase agreement with the person, who is applying for home loan. Further, the OP states that cheque for Rs. 17.80 lakhs in favour of ICICI Bank was handed over by the staff of OP to Complainant on the basis of tripartite agreement. Complainant further stated in the rejoinder that OP has failed to elaborate as to on what basis OP made payment of Rs. 17.80 lakhs to ICICI Bank directly without taking consent of complainant, for releasing the original title deeds as the property.

8. Heard the Complainant who appeared in person and counsel of OP.

9. On going through various documents and other case records and pleas of parties, we find that OP had entered into an arrangement, possibly under a tripartite agreement between Complainant, OP and Mr. Patel as contended by the complainant. It appears the copy of the tripartite agreement signed by complainant & Mr. Patel was given to OP for their signature. For reasons best known to OP, copy of this document has not been placed on record by OP as they are denying the existence of the document. The entire facts and circumstances of the case, especially the act of OP in paying Rs. 17.80 lakhs by cheque in the name of ICICI Bank for adjustment of loan account of the complainant, obtaining of original documents relating to the property of complainant from ICICI, correspondence relating to OP/ their representative asking for NOC of the society before making balance payment etc. show that OP had indeed agreed to pay the balance amount out of Rs. 31 lakhs loan sanctioned by them to Mr. Patel i.e. Rs. 13.20 lakhs to the complainant but did not honour the commitment, which has put the complainant in position of loss/ disadvantage and he was made to run from pillar to post for approaching various authorities for redressal of his grievances. Hence the OP is found guilty of deficiency of service and unfair trade practices and the complainant has a legitimate right to claim an amount of Rs. 13.20 lakhs from the OP along with Interest/ compensation for the hardships gone through by him due to the conduct of OP.

10. The contention of OP that this Commission lacks pecuniary jurisdiction is not valid. Under Section 21 of the Act, Commission has the jurisdiction where value of goods and services and compensation, if any, claimed exceeds Rs one crore. The objection that the Complaint is barred by limitation is also not accepted.

11. For the reasons stated hereinabove, and after giving a thoughtful consideration to the entire facts and circumstances of the case, various pleas raised by the learned Counsel for the Parties, the Consumer Complaint is allowed/disposed off with the following directions/reliefs: -

(i) The OP shall refund the entire principal amount of Rs.13.20 lakhs (Rupees Thirteen lakhs and twenty thousand only) to the complainant, alongwith compensation in the form of simple interest @ 12% per annum from 14.04.2008 (i.e. the date when a cheque of Rs. 17.80 lakhs was issued by the OP in the name of ICICI Bank, to obtain original documents of the complainant from ICICI Bank) till the date of actual payment.

(ii) The OP shall pay a sum of Rs.1 lakh as cost of litigation to the complainant.

(iii) The payment in terms of this order shall be paid within two months from today.

12. The pending IAs, if any, also stand disposed off.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER

