(2008) 04 NCDRC CK 0060

In the National Consumer Disputes Redressal Commission

CORPORATION BANK — APPELLANT

Vs

Masood Ahmed Khan — RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Citation : 2008 2 CPJ 247

Hon'ble Judges : M.B.Shah , Rajyalakshmi Rao J.

Final Decision : Revision Petition dismissed

Judgement

1. -THE present Revision Petition is preferred against the order dated 26. 7. 2007 passed by the State Commission, New Delhi in Appeal No. 346/07. The Petitioner Corporation Bank is the Opposite Party in Complaint Case No. 921/2005 filed in the District Forum (East), Saini Enclave, New Delhi by Shri Masood Ahmed Khan, Smt. Usma Khan. Brief facts of the case are as under: facts of the case:

2. RESPONDENT No. 1 and his wife Respondent No. 2, (original Complainants) wanted to acquire an urban property and entered into an agreement with the developer M/s. Kranti Builders and Engineers Pvt. Ltd. , Respondent No. 3, (opposite party before the District Forum) for purchase of a built-up space under the name and style of Kartik Villa at Plot No. 23b, Shalimar Garden Extension I, Sahibabad, U. P. According to this "agreement to sell" dated 10. 3. 2004, Respondent Nos. 1 and 2 were required to pay Rs. 10 lakh for the property admeasuring super built area of approximately 1400 sq. ft. to Respondent No. 3 in instalments depending on the progress of work. An advance payment of Rs. 5,000 was paid in cash on the date of executing of the agreement. Another agreement called "construction Agreement" was signed on the same day by Respondent Nos. 1 and 2 with M/s. Maitrey Tiwari and Company whereby M/s. Maitrey Tiwari and Company, Respondent No. 4 was supposed to do certain additional works on the property for which it was agreed that Respondent Nos. 1 and 2 will pay Rs. 4,25,000. On the basis of both these agreements, Respondent Nos. 1 and 2 approached to the Corporation Bank, the present Petitioner with a loan application dated 7. 5. 2004, for grant of loan of Rs. 13,20,000 for purchase

of the property. The Petitioner Bank processed the loan application and issued a sanction letter, "credit sanction intimation", dated 11. 5. 2004 in favour of Respondent Nos. 1 and 2. The communication addressed by the Petitioner to Respondent Nos. 1 and 2 stated that after acceptance of the terms and conditions of the loan to be sanctioned and after executing the prescribed security documents by the Respondent Nos. 1 and 2, the Petitioner Bank will arrange to release the money which is required to be repaid in 249 equated monthly instalments. On the next day, i. e. on 12. 5. 2004 an "agreement for term loan" was executed between the Petitioner and Respondent Nos. 1 and 2.

As the property was not delivered within 15 days of the payment of the entire amount, and there was a huge delay of 16 months in handing over possession, the Respondent Nos. 1 and 2 (original Complainants) filed a complaint on 10. 10. 2005 before the District Consumer Forum, Delhi against M/s. Kranti Builders and Engineer (P) Ltd. (present Respondent No. 3), M/s. Maitrey Tiwari and Compnay (Respondent No. 4) and the Petitioner Bank praying for direction to the opposite parties to hand over the physical possession of the property in question; to pay Rs. 5 lakh for harassment and mental agony, etc.

3. IN the complaint, the Complainant contended that the builder was required to hand over possession of the flat No. UG-3, Upper Ground floor, built on Plot No. 23-B, measuring 900 sq. ft. and two commercial shops therein, within 15 days after the payment of the entire amount, and that though the entire amount of Rs. 13,20,000 was paid by taking loan from the Bank, the builder did not give the possession for over 16 months. The Complainants also mentioned in the complaint that they had given a legal notice to the builder on 30. 3. 2005 for which there has been no response from the builder. The Complainants, therefore, prayed that the Respondent Nos. 3 and 4 be directed to hand over physical possession of the said flat and the two shops and that they should be ordered to pay Rs. 10,09,000 as compensation for the mental agony and harassment. He alleged that the bank loan was in fact arranged by the builder himself; that there was collusion between the builder and the bank; and that the bank made payments directly to the builder. Meanwhile, on 12. 11. 2005, Petitioner Bank issued a notice to Respondent Nos. 1 and 2, under Sections 13 (2) and 13 (13) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, informing that they have defaulted on the loan and that within 60 days the liabilities may be discharged and meanwhile the mortgaged property would not be disposed of in any manner. By another notice dated 22. 6. 2006, the petitioner took over the possession of the mortgaged property. Subsequently, the property was sold and the sale proceeds were adjusted against the alleged liabilities.

4. THE District Forum came to the conclusion that it may not be possible to pass order for handing over the possession of the property to the complainant, since it has already been sold in public auction but it came to the conclusion that there was collusion between the bank and the builder and therefore directed by its

order dated 16. 3. 2007 that a total compensation of Rs. 1,98,000 be paid to the Complainant (of this Rs. 1,28,000 is actual payment made by the Complainant to the builder). The Forum also ordered that the bank''s interest in the property shall stand relinquished. Aggrieved by the order of the District Forum, the Corporation Bank as well as the builders (the present Respondent Nos. 3 and 4) preferred Appeals to the State Commission. The State Commission, however, dismissed both the appeals. Hence, the Bank is in Revision Petition before us. Version of the complainant/respondent Nos. 1 and 2: Learned Counsel for the complainant submitted that the District Forum as well as the State Commission have correctly come to the conclusion that there is collusion between the petitioner Bank and the builders, Respondent Nos. 3 and 4 and that they together perpetuated fraud upon the innocent Complainant for the following reasons: (i) The value of a residential flat in the said vicinity is about Rs. 6. 5 lakh only as borne out by the prices of similar properties. But the Complainants agreed to pay Rs. 14,25,000 (Rs. 10 lakh to Respondent No. 3 for the property and Rs. 4,25,000 to Respondent No. 4 for additional work in the properties) only because the understanding was to give two extra rooms fitted with rolling shutters which could be used for commercial purposes as shops. However, Respondent Nos. 3 and 4 failed to carry out these works and failed to deliver the commercial space.

(ii) Respondent Nos. 3 and 4 are essentially one and the same party. Respondent No. 3 is a private limited company and Shri Maitrey Tiwari is its Managing Director. Respondent No. 4 is a partnership firm and the Managing Partner is the same Shri Maitrey Tiwari. The said Shri Maitrey Tiwari arranged the bank loan for the Complainants, but took from the Petitioner Bank the loan money directly in collusion with the bank, without delivering the property.

(iii) The Petitioner bank rushed through the process of sanction of the loan without following any standard procedures, only to suit the evil designs of Respondent Nos. 3 and 4 and released the money directly to them.

(iv) The "agreement to Sell" is dated 10. 3. 2004 and the property is described as "super built area" of 1400 sq. ft. However, the actual "sale deed" was executed and registered only on 13. 5. 2004, i. e. two months later and the area of the flat is shown as "super built area of 900 sq. ft. " An application for loan was made on 7. 5. 2004, and the petitioner Bank issued "a credit sanction intimation" on 11. 5. 2004. But Petitioners also, with the greatest hurry, disbursed the entire loan amount (less Rs. 5,000 which is paid in cash earlier by the Complainant) directly to the Respondent No. 3 and 4 on 12th May itself, through a pay order No. 140679, i. e. even before the "sale deed" and before the mortgage of the property to the Petitioners. The property was mortgaged to the Petitioner Bank by deposit of the title deed (Memorandum of Deposit of Title deeds) only on 20. 5. 2004, but the entire loan was directly disbursed to the Respondent Nos. 3 and 4 on 12th May itself. No bank would ever disburse the loan before the mortgage of the property.

(v) The Petitioner has sanctioned a loan of Rs. 13,20,000 against the security of a property valued at Rs. 10 lakh. No bank would ever sanction a higher amount than the value of the security offered. This also when the buyers of the property allegedly made a token payment of Rs. 5,000 only in cash, for the purchase of the property. The whole series of alleged transactions are bogus and made up.

(vi) An amount of Rs. 3,20,000 was directly disbursed by the Petitioner Bank to the Respondent No. 4, immediately after sanction of the loan in the name of the Complainants. The Petitioner Bank has not explained the reasons for which this amount was disbursed, and the quantum and nature of work done by respondent No. 4. This also is a coloured transaction.

(vii) The concerned Branch Manager of the Petitioner was suspended and a vigilance case was launched against him by the Petitioner for various irregularities committed by him. This also proves the collusion and illegal release of the monies to Respondent Nos. 3 and 4.

(viii) Finally, it is argued that the Complainants did not get the possession of the property promised, but have also been saddled with responsibility for repayment of the loan. This is a total fraud. Version of the Petitioner:

5. IT is argued that the grant of a loan of Rs. 13,20,000 to Respondent Nos. 1 and 2 was a genuine transaction. The Complainants/respondent Nos. 1 and 2 wanted to purchase a property and for that purpose applied for a loan on 7. 5. 2004 and that the loan was sanctioned on 11. 5. 2004 and the money was released to the builder on 12. 5. 2004. It is argued that the District Forum and the State Commission were wrong in coming to the conclusion that there is a collusion between the Petitioner Bank and Respondent Nos. 3 and 4 to defraud the Complainants, on the mere grounds that there were certain alleged irregularities in the procedure for sanction and release of the loan. It is argued that even assuming that the bank did not take precautions to protect its interest while sanctioning the loan, even assuming the Branch Manager committed some procedural irregularities, a conclusion of fraud cannot be drawn, and that there would be no cause of action under the Consumer Protection Act. It is also argued that the disciplinary action taken against the Branch Manager is in relation to his conduct while discharging his duties in certain other cases of the Branch Office and has nothing to do with the sanction of the loan to the Complainants. Findings:

6. WE have gone through the orders of the District Forum and the State Commission, perused the record placed before us and heard the parties at length. The State Commission has rightly confirmed the order of the District Forum after coming to the conclusion that the Petitioner and the builder - respondent Nos. 3 and 4 have colluded with each other and hence, directed them to compensate the Complainant for the harassment caused to them. Firstly, the petitioner Bank has sanctioned the loan and released the same for mortgaging the property in question in a hurry because the amount was paid by the Bank on

12. 5. 2004 by mortgaging title deed on 20. 5. 2004.

Secondly, the petitioner has not explained as to how they had sanctioned the loan against the property of the value of Rs. 10 lakh and that too when the Respondent Nos. 1 and 2 have paid down cash payment of only Rs. 5,000.

7. THIRDLY, the Petitioner Bank could not explain as to what work would be done in exchange of Rs. 3,25,000 disbursed by them immediately as the loan was sanctioned. No documentary evidence has been brought on record as to what was the furnishing and repairing work that has been done by the respondent No. 4. This over enthusiasm on the part of the Petitioner Bank by releasing the sanctioned loan within a period of 5 days, and releasing the same to the builder on the very next day, definitely shows a clear conspiracy between the petitioner Bank''s Manager and the builder. In the written submission, they have admitted that the Branch Manager was suspended for not complying with the prescribed norms while discharging his duty. The contention forwarded by the learned Counsel for the petitioner Bank that in that vigilance report the account of Respondent Nos. 1 and 2 was not mentioned itself, in our view, is a weak submission. We think that the Branch Manager has committed serious irregularities proven beyond doubt by the fact of a vigilance enquiring for his suspension are initiated. The bank''s argument that the present loan case does not feature any vigilance inquiry is not very relevant. The bank may have its own reasons as to why it has not included the present loan case in the vigilance inquiry. Since bona fides of the Branch Manager are clearly in doubt, we see no reason to disbelieve the contention raised by the Respondent Nos. 1 and 2 (i. e. the complainants). Further, it is unbelievable that the Petitioner Bank sold the property at lesser rate than the loan sanctioned, though there was very good price hike in real estate. It is clear from the findings of the lower Fora and even from the admission of the Revision Petitioner, that there is something very fishy about the way the loan was sanctioned and the manner in which the bank directly released the entire amount of loan to Respondent Nos. 3 and 4. The lower Fora correctly came to the conclusion that there is fraud and collusion between the Petitioner bank and the builders, Respondent Nos. 3 and 4, who are essentially the outfits of the same person Shri Maitrey Tiwari. Respondent No. 3 is constituted as a private limited company and Shri Maitrey Tiwari is its Managing Director. Respondent No. 4 is constituted as partnership firm and the Managing Partner is again the same Shri Maitrey Tiwari.

8. THE lower Fora while agreeing with the original Complainants held that value of the flat is only about Rs. 6,50,000 as borne out by the prices of the similar properties of the neighbourhood. But the builders R-3 and R-4 charged slightly more than double the amount, i. e. , Rs. 13,20,000 only because they promised to give two other rooms fitted with rolling shutters which could be used for commercial purposes, as shops. However, for reasons known to themselves, R-3 and R-4 failed to deliver the commercial spaces. The lower Fora have correctly held that the petitioner bank can take shelter under Securitization Act only if

their hands are clean but it cannot perpetuate a fraud and collusion with the builders and thereafter argue that it is protected by the Securitisation Act. We, therefore, do not see any reason to interfere with the well-reasoned order of the State Commission under our revisional jurisdiction and affirm the same. The Revision Petition, therefore, stands dismissed. Petitioner Bank shall pay Rs. 10,000 as cost to the Complainants. Revision Petition dismissed.

