(2014) 03 NCDRC CK 0078

In the National Consumer Disputes Redressal Commission

Hdfc Limited Head Office APPELLANT

Vs

Neetu Singh RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Citation : 2014 0 NCDRC 132

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : Ajit Warrier , Aditya Nayyar , Aditya Mukherjee

Judgement

1. THIS revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 08.04.2008, passed by the Uttarakhand State Consumer Disputes Redressal Commission (hereinafter referred as ''the State Commission '') in FA No. 29/2007, HDFC Ltd. & Ors. vs. Mrs. Neetu Singh & Ors., vide which, while partly allowing the appeal, the order passed by the District Consumer Disputes Redressal Forum, Haridwar dated 02.01.2007, allowing the consumer complaint no. 04/2006, was modified.

2. BRIEF facts of the case are that the complainants Mrs. Neetu Singh and Ram Avtar Singh obtained a housing loan of Rs. 7 lakhs in January, 2000 from the HDFC Limited, Munirka, Outer Ring Road, New Delhi (herein after referred as HDFC) at a fixed interest rate of 13.5%, for the purpose of purchasing a residential house. It has been stated that after some time, the interest rates of such loans got substantially reduced due to introduction of scheme of adjustable interest rates. The complainants got their housing loan converted into a loan with adjustable rate from fixed rate, after paying a conversion fee of Rs.2860 on 23.04.2002 and Rs.1,000/ - on 22.04.2002. The interest rates got reduced further, but as alleged by the complainants, the opposite party did not give them the benefit of further reduction in the interest rates. The complainants filed the consumer complaint in question, which was allowed by the District Forum vide their order dated 03.01.2007, according to which, the opposite party/petitioner was directed to return the amount of additional interest i.e. Rs.99,720/ - alongwith interest at the rate of 9% per annum i.e. Rs.22,437/ - and a further

amount of Rs.12,689/ - taken by them under various heads, besides litigation expenses of Rs. 2,000/ -. In this way, the opposite parties were directed to refund an amount of Rs.1,34,846/ - to the complainant within one month from the date of the order. An appeal was filed against this order before the State Commission, which was partly allowed by order dated 08.04.2008, according to which, the order of the District Forum was modified, and the opposite parties were directed to pay a sum of Rs.99,720/ - alongwith interest at the rate of 7.5% per annum from 09.11.2004, i.e. the date of filing the complaint till realisation and a litigation cost of Rs.2,000/ -. It is against this order that the present petition has been made. At the time of hearing before us, learned counsel for the petitioner HDFC stated that loan agreement had been entered into between the complainants and the opposite party on 08.01.2000, according to which, the rate of interest was fixed at 13.5% per annum. The due date of payment of first EMI was 29.02.2000. AS per this agreement, a loan of Rs. 6 lakhs was advanced to the complainants; however, an application was filed by the complainants on 22.04.2002, requesting for payment of further one lakh as loan and also to convert the loan agreement to variable mode of interest and to reschedule the EMIs. On 23.04.2002, an amount of Rs.2,860 was paid in cash towards administrative fees for processing the above request. A supplemental loan agreement for Adjustable Rates Home Loans was then entered between the parties, in which it was stated as follows: - ''''2.1. The parties hereto agree that effective from the date referred to in Article 4 below until varied by HDFC in terms of this Agreement, the Borrower shall amortise the said outstanding amount of the loan as stipulated in the Schedule in EMIs calculated on the basis of annual rests at the currently prevailing AIR stated in the Schedule until the entire loan has been amortised by the Borrower with interest. The said AIR comprises of the currently prevailing RPLR as stated in the Schedule plus the spread as stated in the Schedule. ''''

3. THE learned counsel stated that in accordance with the supplementary loan agreement for Adjustable Rate Home Loans as stated above, the rate of interest on the loan was linked to HDFC ''s retail prime land rate (RPLR) and the same was to be reviewed/reset on half -yearly basis. The learned counsel has further drawn our attention to letter no. HDFC/606130 dated 09.06.2004 sent by the petitioner to the complainants, in which the details of charging interest from 01.05.2002 onwards have been stated. As per the RPLR, an interest rate of 11.5% was charged from 01.05.2002 to 31.10.2002, a rate of 10.50% was charged from 01.11.2002 to 30.04.2003, a rate of 10% was charged from 01.05.2003 to 31.10.2003 and rate of 9.75% was charged from 01.11.2003 to 31.10.2004. It has been stated in the said letter that the next review will be falling due on 01.11.2004. It is also stated that the complainants were not required to pay EMIs @ Rs. 7,264/ - per month till 30.09.2017, instead of 31.05.2021, which was the original term on the commencement of repayment of enhanced loan of Rs. 7,62,013/ - on 01.05.2002. It is stated that the complainants have saved 67 EMIs of Rs. 7,264/ - each, with the total EMI

amount of Rs. 3,19,616/ -.

4. IN the letter dated 09.06.2004, as mentioned above, it is further mentioned as follows: - ''''HDFC periodically launches marketing schemes in order to stay competitive in the market. We would like to assure you that it is not our intention to be unfair to our existing customers and we do offer existing customers the option to move to newer schemes which will result in an immediate reduction in the interest rate applicable to your loan on payment of a conversion fee. Accordingly, we are agreeable for reducing the rate of interest on the outstanding loan as of 1st July 2004 by converting the same into the newly introduced. Adjustable Rate Home Loan (ARHL) scheme of HDFC with the following benefits. EMIscalculated on Monthly Rest Basis. Interest reset on quarterly basis. Rate of interest linked to HDFC ''s RPLR minus 200 basis points, i.e. current applicable rate will be 7.75% p.a. ''''

It has further been stated that the revised EMI calculated on monthly rest basis would be Rs. 6,375/ - per month and a conversion fees of Rs. 1,581/ - was to be paid. It is also mentioned in the said letter that the complainant should send their acceptance with the cheque for conversion fees, if the above said revised term was acceptable to them. The learned counsel stated that since the conversion fees of Rs. 1,581/ - was not paid by the complainants, the revised rate of 7.75% could not be made available to them and hence, they can not get the benefit of such reduction of interest. The learned counsel further argued that there was also jurisdictional error in the orders passed by the District Consumer Forum, because the complaint in question could not be taken up at Haridwar. The property in question is located at Ghaziabad, U.P., whereas the loan was sanctioned from the Delhi office of HDFC.

5. IN reply, the learned counsel for the respondent stated that conversion fees of Rs. 2,860/ - had been paid by the complainants already and hence, they were entitled to reduction in the rates of interest, as floating rates were applicable to them. There was no justification for the demand of further conversion money of Rs. 1,581/ -. The learned counsel stated that the complainant continued to repay EMI of Rs. 7,000/ - to the petitioner, but still there was no reduction in the amount of principal. He further argued that the District Forum at Haridwar had the jurisdiction to hear the consumer complaint in question, because the petitioner had a branch office there.

6. WE have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us. The facts of the case, as admitted by both the parties are that the complainants took loan from the opposite party on fixed rate of interest, but later on, got it converted under the flexible rate of interest or adjustable interest rate scheme by paying a sum of Rs. 2,860/ - as conversion charges. An agreement was entered between the parties relating to fixed rate of interest, and subsequently another agreement was entered, known as ''''Supplemental Loan Agreement for Adjustable Rate Home Loans ''''. According to the supplemental loan agreement, the interest rate was to

be charged on RPLR (Retail Prime Lending Rate Basis) and the opposite party made adjustment in the amount of EMIs and the number of instalments accordingly. The letter sent by the opposite party dated 09.06.2004 makes the position absolutely clear about the entire factual matrix of the case. It has been stated that as a result of charging interest on RPLR basis, the complainant had made a saving of total amount of Rs. 3,19,616/ -. It has, further, been stated in the said letter that the HDFC periodically launches marketing schemes in order to stay competitive in the market and that they offer existing customers the option to move to newer schemes, which will result in an immediate reduction in the interest rate of payment of conversion fees. It has been offered through this letter dated 09.06.2004 that the HDFC was agreeable for reducing the rates of interest on the outstanding loan as on 01.07.2004 by converting the same into the newly introduced Adjustable Rate Home Loan (ARHL) scheme, according to which the rate of interest shall be linked to RPLR minus 200 basis points and the new rate applicable would be 7.75% per annum. It has also been stated that EMIs would be calculated on monthly rest basis and interest reset on quarterly basis. The conversion fee for taking advantage of the new ARHL scheme has been stated to be Rs. 1,581/ - as 0.25% of the outstanding amount of loan on 01.07.2004, i.e. Rs. 6,32,360.00/ -. The opposite party have stated that the complainants failed to pay the conversion charges of Rs. 1,581/ - and hence, could not avail themselves of the fresh offer of reduction in rate of interest to 7.75% per annum. From the material available on record, it is quite clear that the complainants have not been able to give any plausible explanation, as to why they failed to deposit the conversion charges of Rs. 1,581/ -. This leads us to the irresistible conclusion that the complainants were not entitled to take the benefit of the scheme under which the interest rate was reduced to 7.75% per annum.

7. BASED on the discussion above, it becomes very clear that the orders, passed by the consumer fora below are perverse in the eyes of law, as these fora have failed to carry out a correct analysis of the position on record and based the judgment on wrong assumptions that the opposite party were required to charge the interest rate at 7.75% per annum. The orders passed by the District Forum as well as the State Commission are, therefore, ordered to be set aside. This revision petition is allowed and the consumer complaint is ordered to be dismissed with no order as to costs.

