(2013) 08 NCDRC CK 0038

In the National Consumer Disputes Redressal Commission

JASWINDER SINGH APPELLANT

Vs

CORPORATION BANK RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Citation : 2013 0 NCDRC 587 : 2013 3 CPJ 612

Hon'ble Judges : J.M.MALIK , S.M.Kantikar J.

Advocate : HIMANSHU GUPTA , ALOK KUMAR , AMIT KUMAR DADHICH

Judgement

1. THIS common order passed is passed in the two Revision Petitions No. RP/4662/2012 and RP/4663/2012 filed against the order of the State Consumer Disputes Redressal Commission, Hyderabad, A.P. (in short, ''State Commission '') in First Appeal No. 1010 of 2012 and First Appeal No. 1011 of 2012, whereby the Hon ''ble State Commission was pleased to allow the appeal preferred by the Respondent/Corporation Bank and dismissed the Complaint filed by the Petitioner.

2. BRIEF facts in the case are : The facts are similar in both revision petitions. The Respondent/Bank published a notification for the sale of mortgage properties in the public auction on 27.05.2009 at 11.30 a.m. Accordingly as per the auction conditions the petitioners in both Revision Petitions participated the auction proceedings by depositing earnest money of Rs.1,10000/- each. The Petitioner in RP 4662/2012 succeeded the auction for the Flat No. 8-7-114/8/28, 2nd floor at Hussaini Bagh, Golbowli, Old Bowenpally, under Kukatpally Municipality for a sum of Rs.15,05,500/-. The petitioner in RP No 4663/2012 succeeded the auction for the Flat No. 8-7-114/8/28. on first floor flat at Hussaini Bagh, Golbowli, Old Bowenpally, under Kukatpally Municipality for a sum of Rs.16,40,000/- . Thereafter, the OP asked to remit the balance auction money. On 28.05.2009 the OP issued Xerox documents of the auction property for the scrutiny from the Complainant. The Complainant approached few other Banks for getting loan, who on verification on the title deed stated that the title deeds are defective. The Complainant verified the title deeds from legal consultants who also confirmed about the defects in the title deeds Hence, thereafter the Petitioner approached

the Corporation Bank (OP) for getting Housing Loan with respect to said property. But the OP Bank also refused to grant loan without setting any reasons. Therefore, the Petitioner wrote a letter to the Regional Office on 30.05.2009 about the defects in the title of a said property and requested the OP to refund the said deposited earnest money of Rs.1,10,000/-. The OP did not respond but stated that they have already sent a letter by forfeiting investment money paid by the Complainant. But no such letter received by the Complainant. Therefore, the Complainant finally sent a registered letter on 11.06.2009 for which the OP replied evasively with false and frivolous allegations. Further, the Complainant approached a senior legal Counsel who also being advocate in the panel of banking institutions and took a legal opinion on the said title deed. As per their opinion dated 28.6.2009 the property covered by Registered sale deed is in favour of defaulter of the OP and the powers vested in favour of vendor of the said defaulter from each other. On this ground the Complainant wrote another letter to OP on 09.07.2009 enclosing the said legal opinion and requested to refund the earnest money deposited. But the OP did not complied with the Complainants request. Hence, alleging deficiency of service the Complainant filed a complaint before the District Consumer Disputes Redressal Forum, Hyderabad, A.P. (in short, ''District Forum '') for the relief in the CC No. 810/2009. The OP filed their version as follows: They have acted as per the terms and conditions furnished to the bidders in respect of auction property. The Complainant was declared as highest bidder but he did not comply with the terms and conditions of auction .He has not deposited 25% of the bid amount on same day and also failed to pay the remaining 75 % within fifteen days. Therefore, the OP have forfeited the earnest money of 1,10,000/- as per terms of auction. The OP also contended that they have sustained loss by the way of conducting another auction in respect same property and expenses of publication. Therefore, no deficiency in service.

3. THE District Forum allowed the Complaint after hearing the Counsel for both the parties and perused all material on record and directed the OP to refund the earnest deposit amount of Rs.1,10,000/- to the Complainant along with interest at 9% p.a. from the date of the deposit till the date of realization and to pay Rs.2,000/- towards costs of the complaint.

4. AGGRIEVED by the order of the District Consumer Forum the Bank (OP) preferred two appeals FA No. 1010 of 2012 and FA No 1011/2012 before State Commission. OP contended that there is no illegality or irregularity or deficiency in service in forfeiting earnest money. The State Commission perused the entire material on record and the evidence and heard the both the parties and set aside the order of the District Forum and dismissed the complaint.

5. AGGRIEVED by the order of State Commission the Petitioners have filed the instant Revision Petitions before this Commission.

6. WE have heard the Counsel for the parties. The Counsel for the Petitioner argued that the OP Bank as played fraud as they have knowledge about the

defective title deed and OP betrayed the trust of the general public by auctioning such property. We have considered the following submissions of the OP Bank. It is pertinent to observe that, when the bank has advertised that purchase of flat would be on ''as-is-where-is '' basis, it clearly means that the Seller is not responsible for the Title Deeds. It is the bounden duty of the Purchaser to find out, whether the above said flat is free from all encumbrances. The Bank is not responsible for that. That is why Bank has given the advertisement in such a manner, cautioning the Purchaser to verify the Title Deeds. In that context, the Bank will have to spend lot of money on advertisements and on auction itself. The time of the bank managers is also wasted.

7. ON perusal of evidence on record it appears that the O.P have misused the term for "as is where is ". It was a deliberate concealment of legal position of the title deed. It is clear that at the inception only the intentions of OP were to conceal the defective title. Therefore, the advertisement "as is where is " created confusion in this case. Affidavit of Complainant shows that the Complainant was interested in participating in the public auction and requested the OP to provide the copies of the title deeds for verification prior to the date of auction but the OP refused to provide it prior to the date of auction. Therefore, the Complainant was unable to verify the title.

8. FROM the inception the OP was well aware about the defective title of said auctioned property and with malafied intentions OP has not issued those documents to the complainant for verification of legal aspects of title. It is quite surprising to note that OP issued the copies of title deed after completion of auction process. Therefore, such defective title is of no use for the complainant. Even after successful bidding the complainant tried his level; best to get loan to remit balance of bid amount; but no banks were ready to grant loan on basis of such defective title deed. The OP bank also denied giving loan to the complainant.

9. HENCE , we hold the OP bank responsible for such debacle by which the Complainant did not get house and sustained loss despite he was a successful bidder. The OP publishing or advertising such defective titled property for auction sale amounts to unfair trade practice and deficiency in service. Hence, the action of OP in forfeiting the earnest money is an illegal act.

10. HENCE , we partly allow both Revision Petitions. Accordingly we set aside the order of State Commission and restore the order of District forum with modifications as ; The OP bank is directed to refund to each petitioner amount of Rs.1,10000/- without any interest after deduction of Rs.25,000/- towards the cost of auction proceedings, advertising etc. This order should be compiled within 45 days otherwise it will carry interest @ 9% per annum till realisation.