(2013) 08 NCDRC CK 0096

In the National Consumer Disputes Redressal Commission

PRADEEP KUMAR AGARWAL — APPELLANT

Vs

SANJAY AGARWAL , BRANCH MANAGER STATE BANK OF INDIA — RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Citation : 2013 0 NCDRC 548 : 2013 3 CPJ 699

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

Advocate : GOPAL SINGH

Judgement

1. SHRI Pradeep Kumar Agarwal, petitioner/OP1, Builder of M/s.Shanti Construction, entered into an agreement with the Complainant, Sh.Sanjay Aggarwal, for sale of flat No. B8, 3rd Floor, Biru Complex, Simdega. It was agreed that it will have built-up area of about 1,500 sq.ft. @ Rs.750/- per sq.ft, along with parking space. At the time of agreement, Pradeep Kumar Agarwal, OP1, took a sum of Rs.3,00,000/- from the complainant. OP1, of his own accord and after consultation/negotiations with State Bank of India, OP2, got a Home Loan for an amount of Rs.10,00,000/- sanctioned in the name of the complainant. It is alleged that OP2, while working in cahoots with OP1 issued two cheques in the name of M/s. Shanti Construction for an amount of Rs.9,10,000/- on 25.04.2008 and Rs.90,000/- on 14.07.2008. OP1 did not execute any Sale Deed in favour of the complainant. It is averred that OP1, in connivance with the Bank, deposited a copy of agreement of sale, signed only by him and got disbursed a sum of Rs.10,00,000/- from the Bank, without the knowledge of the complainant. Again, the Bank, without disclosing these facts to the complainant, got his signatures, on the disbursement form and also got signatures of complainant and his wife on two blank papers.

2. THE complainant came to know regarding the loan transaction when the Bank, without any notice or information, deducted an amount of Rs.11,800/- on 02.07.2009 from the account of Rourkela Branch and an amount of Rs.95,000/- from the account of State Bank of India, situated at Simdega, on 21.08.2009,

the total being, Rs.1,06,800/- as ''interest '', of the above said loan. It was agreed that if the incomplete flat took more than 2 months, to complete, in that event, the interest on the amount of the loan will be paid by OP1. Even though there was delay of 17-18 months, OP1 did not pay the interest on the loan amount. OP1 had promised that he will hand-over possession of the flat within 18 months, but the needful was not done. There was also no improvement in the status of the flat. A legal notice was issued, but it did not produce the desired result. Ultimately, this complaint was filed before the District Forum with the prayer that OP1 be asked to return the sum of Rs.3,00,000/-, with interest @ 18% p.a. OP2, be asked to return sum of Rs.10,00,000/- and interest in the sum of Rs.1,75,000/- and interest thereon, till date. The amount of Rs.1,00,000/- was demanded for compensation.

3. BOTH the OPs contested this case. The District Forum allowed the complaint and directed the OP1, Pradeep Kumar Agarwal, to handover possession of completed Flat NO.B-8, as per the Agreement for Sale in the Biru Complex, Simdega, as booked by him, within a period of two months from the date of the order, failing which, OP1, Builder, was directed to refund the housing loan amount of Rs.10,00,000/- either to the complainant or directly to the SBI, Simdega Branch, which amount is outstanding in the name of the complainant in the SBI, Simdega Branch,OP2, along with admissible interest on the said amount from the date of filing of this complaint, i.e., 31.10.2009, till its final payment. Secondly, Pradeep Kumar Agarwal was further directed to pay Rs.3,00,000/- to the complainant, as paid by him at the time of booking of the said flat to OP1, as admitted by OP1, in the agreement for Sale (Exb.1), along with interest @ 10% p.a. from March, 2008, till its final payment. Thirdly, OP1 was further directed to pay Rs.1,75,000/- to the complainant on account of interest realized or realizable by the OP Bank from the complainant, from the date of grant of housing loan to the complainant till the filing of this case, which the complainant was forced to bear due to non-delivery of flat by the OP1-Builder, to him. Fourthly, Pradeep Kumar Agarwal, OP1, was further directed to pay compensation in the sum of Rs.17,000/- and cost of litigation in the sum of Rs.4,000/- to the complainant, and OP2-SBI was directed to pay compensation amount of Rs.3,000/- and cost of litigation in the sum of Rs.1,000/- to the complainant, within a period of two months, from the date of this order, on account of deficiency in service and adopting unfair trade practice on their part, in the present case causing mental and physical harassment and agony to him. Lastly, it was ordered that OP2, SBI, will not be entitled to realize any interest from the complainant on the aforesaid housing loan amount from November, 2009, i.e., after filing of this case, till the possession of the Flat in question is handed over by OP1, to the complainant or the amount of housing loan disbursed to the OP1/Builder is not refunded by him, either to the complainant or to the OP2 Bank, as the liability to pay the present and future interest on the housing loan was fixed upon Pradeep Kumar Agarwal, OP1.

4. THE State Commission dismissed the appeal filed by Shri Pradeep Kumar

Agarwal, OP1. This revision petition has been filed by Sh.Pradeep Kumar Agarwal, OP1.

5. WE have heard the learned counsel for the petitioner. He argued that the view taken by both the fora below are not based on documents. The complainant has failed to prove that both the OPs were working, cheek by jowl, in order to cheat the complainant. It was submitted that the complaint contains criminal allegations against the parties, and as such, the consumer fora does not have the jurisdiction.

6. INSTEAD of touching the heart of the problem, learned counsel for the petitioner just skirted it. Both the fora have decided the case against the OP1. The counsel for the petitioner could not invite our attention that some legal questions arise in this revision petition. It stands proved that OP1 and 2 worked hand in hand to cheat an innocent person. It was the bounden duty of the Bank to inform the complainant that a loan was being sanctioned in his favour. They should have charged interest after giving notice to the complainant. They were not to charge interest of their own, without taking the consent of the complainant, that too, at two different Branches, situated at different places. The documentary evidence proves the case of the complainant. Exb. ''1 '', is Xerox copy of the agreement to Sell, dated 16.04.2008, which bears the signature of Pradeep Kumar Agarwal, OP1, Proprietor of M/s. Shanti Construction, only. Exb. ''1 '', is a document, of utmost importance. It shows that the complainant had booked one flat bearing No. B-8, on the third floor of Biru Complex, in March, 2008, on payment of earnest money of Rs.3,00,000/- to the Builder,OP1, and the rest of the amount of the flat, was to be paid through Housing Loan, to be granted by SBI, Simdega Branch, of the complainant to the OP1. Most importantly, the signatures of the complainant are conspicuously missing. Exb. ''G '' goes to reveal that the disbursement of the loan amount was paid to OP1. It is strange to note that OP2 disbursed the loan, on the basis of the Sale Deed, which did not bear the signatures of the complainant. OP1 did not file the original copy of the agreement in dispute. The main document was kept under the hat, for the reasons best known to OP1. We cannot discuss about Exb. ''Y '', which is not proved, in accordance with law. The District Forum, correctly held, to this extent: "Question of deficiency in service on the part of OP No.2, SBI, Simdega Branch (28). ... . He also alleged that the OP Bank never intimated him regarding sanction of his housing loan nor any chit of paper has been filed by the Bank in this regard, we are not inclined to accept the above plea of the complainant, in view of the fact that Arrangement letter of housing finance dated 23.04.2008 (Exhibit-B), Deed of Undertaking dated 23.04.2008 (Exhibit-C) and Memo of term loan agreement dated 23.04.2008 (Exhibit -D), all are signed by both the borrowers and Exhibit-B is also signed by the Guarantor Vijay Kumar Agarwal, after sanction of the aforesaid housing loan. We are also not inclined to accept the plea of the complainant that only their signatures were obtained by the Bank on the blank forms, as prior to filing of this case, no such allegations have been made against the OP Bank by the complainant or co-borrower or

guarantor ".

7. HOWEVER , the following points are also note-worthy. The said disputed letter, Exb. ''G '', which is a disbursement letter, was not sent, in writing, to the complainant or his wife. No date has been mentioned by the borrowers on the said letter, except their signatures. The endorsement and the signature of the Bank Officer, in the margin of the said letter, reveals the date, 23.04.2008. The date of execution of arrangement letter, Exb. B, Deed of Undertaking, Exb. C and Memo of term loan agreement, Exb.D, are also dated 23.04.2008. Under these circumstances, there was no question for the complainant/borrower to execute the disbursement letter Exb.-G, on the same day, without any intimation from the Builder,OP1 that the building was complete in all respects, and he was ready to handover the possession of the same to the purchaser. The bulk amount of the complainant was paid by the Bank to OP1 only, after 25.04.2008 and rest on 14.07.2008. Till July, 2008, all the disbursements, made in favour of OP1, were made, but possession of the flat was not made to him. The necessary documents were not yet executed. It is also interesting to note that no mortgage deed or no other collateral security/demand was obtained by the Bank from the Borrower, nor Deed of Conveyance of the property was purchased or executed in favour of the complainant by the original owner. In absence of those documents, the Bank did not feel any hesitation to disburse the remaining loan in favour of the OP1. OP2, Bank also did not try to know as to who was in possession of the premises in dispute. The OP-Bank did not inform the complainant after disbursement of such heavy loan amount, in favour of the Builder. Exb. ''G '' was an important document by which a heavy amount of Rs.10,00,000/- was intended to be disbursed. The OP-Bank did not insist to inscribe the same by the borrower and also put the date under his signatures. The Bank also did not insist the borrower to issue withdrawal slip or cheque to disburse such a huge housing loan amount, in favour of the complainant, than to do so by mere chit of paper, Exb. ''G ''. The Bank did not insist for a Tripartite Agreement among all the three parties.

8. THE record reveals that after getting the entire money in July, 2008, the petitioner/OP1 was to handover the possession of the flat to the complainant, within two months. More than five years have elapsed, the complainant has not yet got the possession. The filing of this revision petition is a delaying tactic. OPs are gaining time to avoid their liabilities. We, therefore, dismiss the revision petition, with costs of Rs.1,00,000/-, which be paid to the complainant, for wasting five years, i.e., Rs.20,000/- per year, which be paid within 30 days, from the receipt of this order, otherwise, it will carry interest @ 9% p.a. till realization. Petitioner is directed to satisfy the Decree, within two months, after receipt of the order, otherwise, he will be liable to pay extra penalty @ Rs.25,000/- per month, to the complainant, till the Decree stands satisfied, which will be in addition to the previous order and the order passed by the District Forum.

