CC/252/2016

Date of filing: 12.02.2016
Date of Disposal: 27.09.2023

BEFORE THE BANGALORE URBAN II ADDITIONAL DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, SHANTHINAGAR, BANGALORE – 560027

DATED THIS THE 27TH DAY OF SEPTEMBER 2023

CONSUMER COMPLAINT NO.252/2016

PRESENT:

SRI B.DEVARAJU, B.A.L., LL.B., PGDCLP., (NLSIU) ... MEMBER-CUM- I/C PRESIDENT

SMT.V.ANURADHA, B.A., LL.B., ... MEMBER

COMPLAINANT:

Mr.Tarun Agarwal,
S/o Mr. Tej Kumar Agarwal,
Aged about 40 years,
R/o No.503, Landmark Apartments,
New Hyderabad Colony,
Lucknow-226007.

(Complainant is Rep. by Adv. Sri M.G.Kumar)

V/s

OPPOSITE PARTIES:

1. Axis Bank,
   Represented by its Manager,
   Having its office at:
   No.8, 3rd Floor, Sona Towers 32nd
   E Cross, 4th T Block, Jayanagar,
   Bangalore-560041,

2. M/s. Faith Inc.
   Rep. by its Partner
   Mr.Vijay Appachu K.G.,
   Having its office at:

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No.1666, 27th Main, 2nd Sector,
HSR Layout,
Bangalore-560102.

And also at:

#75/3, 21st A Cross,
24th Main, 1st Sector,
HSR Layout,
Bangalore-560102.

3. Mr.P.K.Chandrashekar,
Aged about 43 years,
S/o B.Krishnappa,
Residing at No.446,
Ground Floor, 28th Main,
1st Sector, HSR Layout,
Bangalore-560102.

4. Mr.C.Babu Reddy,
Aged about 44 years,
S/o Mr.Chikkaramaiah Reddy,
Residing at No.74, 1st Avenue, 4th Main,
Teachers Colony, Venkatapura,
Bangalore-560 034.

5. Sri.Rajkumar,
Aged about 52 years,
S/o Mr. Chandrashekar Reddy.A.R.,
Residing at No.259/D, 7th Cross,
HSR Layout,
Bangalore-560102.

6. M/s. Urban Estates,
Rep. by its Partners,
Having its Office at No.523,
Ground Floor, 24th Main Sectors,
H.S.R. Layout,
Bangalore-560 102.

(OP No.1 is Rep. by Adv. Sri Jai M Patil)
(OP No.2 is Exparte,)

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(OP No.5 Died on 28.05.2020)
(OP No.3, 4 & 6 are Rep. by Adv. Sri.B.R.Netravathi)

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Author: **SRI.B.DEVARAJU, MEMBER-CUM- I/C PRESIDENT**

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//JUDGEMENT//

1. This complaint is filed by the complainant under Section 12 of Consumer Protection Act, 1986 (hereinafter referred as an Act) against the opposite parties for the following reliefs;

    1. To rescind the Home Loan Agreement and Loan Account No:PHR000900825407;
    2. To refund the sum of Rs.13,10,675/- with 18% interest thereon, to the complainant;
    3. Direct the OPs to pay a sum of Rs.5,00,000/- as damages and Rs.1,00,000/- towards the costs and grant any such other reliefs, as may deem fit;

2. The case of the complainant in brief is as under;

The complainant had agreed to purchase 2 residential flats bearing Nos.316 & 317 from opposite party No.2 for sale consideration of Rs.47,50,000/-. The opposite party No.1 had sanctioned a loan of Rs.38,00,000/- to the complainant under Sanction Letter dated 23.09.2013 and Home Loan Agreement dated 26.09.2013. On 26.09.2013 the complainant has paid advance amount of Rs.9,50,000/- under the Agreement of Sale.

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3. The further case of the complainant is that opposite party No.1 agreed to release Rs.10,42,019/- to opposite party No.2. Subsequently, the complainant left the country for few months and returned to Bangalore in September 2014. The opposite party No.1 had transferred Rs.3,82,981/- to opposite party No.2 without any instruction of the complainant. The opposite party No.1 produced fake email stating that complainant had instructed it to release Rs.3,82,981/-.

4. It is also the case of the complainant that he had paid Rs.3,60,675/- to opposite party No.1 towards the loan and suffered loss of Rs.13,10,675/- and opposite parties are liable to pay this amount. The complainant values the complaint for the purpose of pecuniary jurisdiction of Rs.13,10,675/-. The act of the opposite party is fraudulent and deficiency of service. Hence, this complaint.

5. In response to the notice, opposite party Nos.1, 3 to 6 appeared through their counsels. Opposite party No.1 has filed version. The complaint is not maintainable either on facts or law. The complainant agreed to repay loan to the opposite party No.1. The present dispute does not fall within purview of this Forum. On the basis of loan application, Rs.38,00,000/- loan had been sanctioned to the complainant to purchase the flat from opposite party No.2. As per the instructions of the complainant, a sum of Rs.10,42,019/-, Rs.3,83,981/- and Rs.4,75,000/- has been disbursed to opposite party No.2 on 27.09.2013,

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17.10.2013 and 16.11.2013. The complainant is liable to pay Rs.4,17,790/- as on 02.06.2016. The allegations made by the complainant against opposite party No.1 have been denied. There is no fraudulent act and deficiency of service on the part of the opposite party No.1. Therefore, opposite party No.1 requests to dismiss the complaint.

6. The opposite parties No.3 to 6 have filed separate written statement. They contend that this complaint has been filed to harass, humiliate and cause loss to them. They contend that as per the representation made by the opposite party No.2, the opposite parties No.3 to 5 have entered into development agreement with opposite party No.2 as per the terms of joint development agreement dated 07.02.2011. The complainant has entered into Sale Agreement dated 26.09.2013 with opposite party No.2 in respect of flats bearing No.316 & 317. The complainant is not entitled for any claims or reliefs against opposite parties No.3 to 6. They request to dismiss the complaint with cost.

7. The complainant filed his affidavit evidence and relies on 11 documents. The affidavit evidence of Authorized Signatory of opposite party No.1 has been filed and opposite party No.1 relies on 8 documents. The affidavit evidence of opposite party No.4 has been filed with 4 documents. Heard the arguments of both the side. We perused the records.

8. The following points arise for our consideration;

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1. **Whether the complainant proves the deficiency of service on the part of the opposite parties?**
2. **Whether the complainant is entitled to the reliefs claimed in the complaint?**
3. **What order?**

9. Our findings on the above points are as under;

i) **POINTS NO.1 & 2:** Partly in the Affirmative;

ii) **POINT NO.3:** As per final order for the following;

REASONS

10. **POINTS NO.1 & 2:** The complainant seeks the reliefs to rescind the home loan agreement and loan A/c No.PHR000900825407, refund of Rs.13,10,675/- with interest, Rs.5,00,000/- as damages and Rs.1,00,000/- towards cost. The complainant has specifically pleaded in the complaint that he himself and opposite party No.2 entered into an Agreement of Sale in respect of flat No.316 & 317 for a total sale consideration of Rs.47,50,000/- and he has paid advance amount of Rs.9,50,000/-. The complainant further specifically pleaded that a home loan of Rs.38,00,000/- has been sanctioned by opposite party No.1 Axis Bank on 23.09.2013 and sum of Rs.10,42,019/-, Rs.3,82,981/- and Rs.4,75,000/- was disbursed by opposite party No.1 to opposite party No.2 Builder.

11. We have perused Agreement of Sale dated 26.09.2013 entered into between the complainant and opposite party No.2 for Rs.47,50,000/-. We have also perused Home Loan

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Agreement dated 26.09.2013 entered into between the complainant and the opposite party No.1 for Rs.38,00,000/-. The complainant admits payment of some amount referred above by opposite party No.1 bank to opposite party No.2 out of the sanctioned home loan agreement.

12. It is forthcoming from the averments of the parties and the records that the opposite party No.2 who was the builder had defaulted in completing the project and thereafter the said project was entrusted to opposite party No.6 Urban Estates. The fact of the matter is that the complainant had paid a total sum of Rs.13,10,675/- to the opposite party No.2. On the basis of Tripartite Agreement dated 26.09.2013 entered into between the complainant and the opposite party Nos.1 & 2, a sum of Rs.38,00,000/- came to be sanctioned as Home Loan to the complainant. The terms and conditions of the said Tripartite Agreement contain various compliances on the part of all the parties. It is the contention of the opposite party No.1 Bank that it had released Rs.19,00,000/- to the opposite party No.2 on behalf of the complainant towards construction of the project and for completion of the two flats booked under the Agreement of Sale and the Tripartite Agreement. The opposite party No.2 Builder remained absent and not contested the claim of the complainant. It is crystal clear that the complainant being an innocent consumer being trapped into the transaction and being harassed for no fault of his. The opposite party No.1 being the banker

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cannot absolve its responsibility in not being vigilant in releasing the loan amount after due verification of the course of construction stage of the project. However, the Tripartite Agreement clearly creates a charge over the said two flats subjected under the Home Loan in favour of the opposite party No.1 Banker. Since the said property is already under charge as per the Tripartite Agreement nothing prevented the banker to enforce the same and to realize the loan amount disbursed from the opposite party No.2 or with the present builder.

13. During the course of proceedings it is informed by the Advocate for opposite party Nos.3, 4 & 6 by filing a memo with Death Certificate about the death of opposite party No.5 on 02.09.2022. No LRs of the opposite party No.5 if any filed application to implead in the case.

14. The complainant has established deficiency of service against the opposite party Nos.1 and 2 since the banker was bound to be vigilant in the matter of granting loans and disbursals and the opposite party No.2 being the builder defaulted in the matter of completion of the project after collecting substantial money from the complainant. The complainant cannot be made to suffer because of the wrongdoings on the part of the opposite party No.2. The opposite party No.1 is at liberty to seek appropriate remedies to recover the amount due under the said loan sanctioned and the subsequent disbursal under the said Tripartite Agreement by creating charge over the same.

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Since the opposite party No.6 has taken over the activities of continuing with the project dropped by the opposite party No.2 after cancellation of the Joint Development Agreement, it is just and proper not only on the part of the opposite party No.6 but also the owners of the property being the opposite party Nos.4 to 6 to compensate the complainant for the refund of the money paid to the opposite party No.2 and also to discharge the loan under the Tripartite Agreement by repaying the amount due under the said Home Loan or to sell the property to the opposite party No.1 itself if so desired on the terms of the Tripartite Agreement or otherwise. Since the opposite party No.5 died on 28.05.2020 as per the death certificate on record and the consequent non-impleading of the LRs the complainant is at liberty to proceed against the LRs, if any of the deceased opposite party No.5 in further proceedings by filing appropriate application.

15. The complainant seeks for rescinding the Home Loan Agreement and the loan account, to refund Rs.13,10,675/- with 18% interest, to pay compensation of Rs.5,00,000/- and to pay litigation cost of Rs.1,00,000/-. In our considered view the complainant is entitled for refund of Rs.13,10,675/- with interest at 9% p.a. from the date of complaint till realization from the opposite party Nos.2 to 6 who are liable jointly and severally. The outstanding towards the Home Loan to the opposite party No.1 shall also be discharged by the opposite party Nos.2 to 6 and to get the same released in their favour or to sell the said flats

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to the opposite party No.1 bank if it so desires. The complainant seeking compensation of Rs.5,00,000/- and litigation cost of Rs.1,00,000/- is excessive and exorbitant. Since interest is awarded as compensation, the complainant is not entitled for any amount towards the same. However, the complainant is entitled for litigation cost of Rs.10,000/- from the opposite parties No.1 to 6 jointly and severally.

16. **POINT NO.3:** In view of the discussion made in the preceding paragraphs, the complaint requires to be allowed in part. The opposite parties No.2 to 6 are liable to refund of Rs.13,10,675/- with interest at 9% p.a. from the date of complaint till realization to the complainant. The outstanding towards the Home Loan to the opposite party No.1 shall also be discharged by the opposite party Nos.2 to 6 and to get the same released in their favour or to sell the said flats to the opposite party No.1 bank or its nominees if it so desires. The opposite parties No.1 to 6 are liable to pay Rs.10,000/- as cost of litigation expenses to the complainant. We proceed to pass the following;

ORDER

The complaint is allowed in part.

The opposite parties No.2 to 6 are directed to refund Rs.13,10,675/- (Rupees Thirteen Lakh Ten Thousand Six Hundred Seventy Five only) with interest at 9% p.a. from the date of complaint till realization to the complainant. The

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outstanding towards the Home Loan to the opposite party No.1 shall also be discharged by the opposite party Nos.2 to 6 and to get the same released in their favour or to sell the said flats to the opposite party No.1 bank or its nominees, if it so desires.

The opposite parties No.1 to 6 are liable to pay Rs.10,000/- (Rupees Ten Thousand only) as towards of litigation expenses to the complainant.

The opposite parties shall comply the order within 60 days, failing which interest shall be calculated at 10% p.a. on Rs.13,10,675/- (Rupees Thirteen Lakh Ten Thousand Six Hundred Seventy Five only) thereafter till realization.

Supply free copy of this order to the parties.

Return spare copies of the pleading and evidence to the parties.

(Dictated to the Steno, typed by her, transcript corrected, Revised and then pronounced by the open Commission on **27th day of SEPTEMBER 2023**).

27/09/2023
(V.ANURADHA)
MEMBER

27/9/23
(B.DEVARAJU)
MEMBER-CUM-I/C PRESIDENT

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//ANNEXURE//

Witness examined for the complainant's side:

Mr.Tarun Agarwal, who being the complainant has filed his affidavit.

List of documents filed by the complainant:

1. Copy of Home Loan Agreement with Axis Bank dated 26.09.2013,
2. Copy of Power Home Sanction letter dated 24.09.2013,
3. Copy of Tripartite Agreement dated 26.09.2013,
4. Copy of false e-mail dated 21.10.2013,
5. Copy of Account Statement from 28.04.2013 to 28.04.2015,
6. Copy of Approval letter from Axis Bank dated 20.01.2012,
7. Copy of Payment Receipt dated 08.10.2013 issued by Faith Inc.,
8. Copy of Payment Receipt dated 24.10.2013 issued by Faith Inc.,
9. Copy of e-mail correspondences with Axis Bank,
10. Copy of Legal Notice dated 07.11.2015,
11. Copy of Reply Notice dated 09.12.2015.

Witness examined on behalf of the Opposite Parties:

Mr.Mahantesh.B.J, who being the Authorized Signatory of the opposite party No.1 has filed his affidavit.

Mr.C.Babu Reddy, who being the opposite party No.4 has filed his affidavit and also on behalf of opposite party No.3, 5 to 6.

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List of documents filed by the Opposite Parties:

1. Copy of the Statement of Account,
2. Copy of Disbursement Request Applications for the amount of Rs.3,82,981/- dated 09.10.2013 and Rs.4,75,000/- dated 06.11.2013,
3. Disbursement request form dated 24.09.2013,
4. Copies of the e-mail dated 17.10.2013 and 16.11.2013 received by the Axis Bank Employees Mr.Aswin and Mr.Dhananjay,
5. Copy of Tripartite Agreement,
6. Copy of Agreement to Sell,
7. Copies of 10 receipts,
8. Copy of the Joint Development Agreement dated 07.02.201,
9. Copy of the Deed of Cancellation of Joint Development Agreement dated 16.07.2014,
10. Copy of the Consent Letter signed by the complainant,
11. Copy of the e-mail correspondence sent by opposite party to complainant.

V. Anuradha 27/09/2023
(V.ANURADHA)
MEMBER

27/9/23
(B.DEVARAJU)
MEMBER-CUM-I/C PRESIDENT