

**CONSUMER DISPUTES REDRESSAL COMMISSION-VII
DISTRICT: SOUTH-WEST
GOVERNMENT OF NCT OF DELHI
FIRST FLOOR, PANDIT DEEP CHAND SHARMA SAHKAR
BHAWAN
SECTOR-20, DWARKA, NEW DELHI-110077**

CASE NO.CC/83/20

Date of Institution:- 24.02.2020

Order Reserved on:- 06.02.2024

Date of Decision:- 04.04.2024

IN THE MATTER OF:

Sh. Vijay Kumar Gupta,
S/o ShriPushkar Mal Gupta,
R/o WZ-51, Street No.3,
Ram Chowk, Sadh Nagar, Palam Colony,
Palam Village, New Delhi - 110045

..... Complainant

VERSUS

DCB Bank Limited,

Through the General Manager,
7/56, 3rd Floor, DeshBandu Gupta Road,
Karol Bagh, New Delhi - 110005

.....Opposite Party

ORDER

Suresh Kumar Gupta, President

1. The complainant has filed the complaint under section 35 of Consumer Protection Act, 2019 (hereinafter referred to as Act) with the allegations that in October, 2017 he has applied for the extension of credit facility of 85 lakh as home loan with Karol Bagh Branch of OP. The loan was sanctioned vide letter dated 31.10.2017 by creating lien over property bearing no. RZ-72, Out of Khasra No.94/20/1, Gali no.14-A/5, Village Palam Sad Nagar, Palam Colony New Delhi with 10% p.a. floating interest with monthly rest. The account number

DRBLDEL00438249 was allotted and confirmation of loan disbursement was received on 03.11.2017. The loan was repayable in 180 EMI of Rs.91341/- starting from 04.12.2017-04.11.2032. The loan amount was received in his bank account bearing no.50372299300 maintained with Allahabad Bank. He was residing in the property which was mortgaged. He decided to sell the same due to some unavoidable circumstances and submitted foreclosure request with the bank vide request no.650062 and 650068. On 21.12.2018 foreclosure letter were received with 4% foreclosure charges on the principal amount and applicable taxes. The clause 28A of the general terms and condition enclosed with the sanctioned letter says that there will be no lock in period, no part pre-payment charges and no full pre-payment charges levied on floating rate home loan and on floating rate business loan with only individual borrowers. He being the individual borrower was not obliged to pay foreclosure charges. The circular of RBI dated 07.05.2014 says that banks will not be permitted to charge foreclosure charges on all floating rate term loan sanctioned to individual borrowers with immediate effect. The status of co-borrower was not considered relevant which is also apparent from RTI dated 13.11.2014 vide RTI number DNBR.PD.CO.No.2317/03.07.31/2014-15 in which similar issue was raised and resolved. He paid the foreclosure charges under protest. On 17.12.2018, he has dropped an email to the OP and concerned officers to waive the foreclosure charges but in vain. There is unfair trade practice on the part of OP. Hence, this complaint.

2. The OP has filed the reply to the effect that loan was business loan. The foreclosure charges were levied in accordance with the terms and conditions of the sanction letter. The circular

no.DBR.DIR.BC.No.08/13.03.00/2019-20 issued by RBI says that banks shall not charge foreclosure charges/pre-payment penalty on any floating rates term loan sanctioned, for the purpose other than business. The complainant does not fall within the category of individual borrower as complainant has availed a business loan facility where the loan was availed not only by individual borrower which also includes co-obligants/co-borrowers in the name of Vijay Kumar Gupta, Tina Gupta and Gupta Vijay K. and Com. The subject loan was commercial in nature so there was no question of waving foreclosure charges.

3. The complainant has filed the rejoinder wherein he has reiterated the stand taken in the complainant and denied the averments of written statement of the OP.
4. The parties were directed to lead the evidence.
5. The complainant has filed his own affidavit in evidence and corroborated the version of complaint and placed reliance on the documents Ex.CW1/1 to 1/8.
6. The OP has filed the affidavit of Sh. Pramod Chand in evidence and corroborated the version of written statement and placed reliance on the documents Ex.RW1/1 to 1/4.
7. We have heard the complainant, Ld. Counsel for the OP and perused the entire material on record.
8. It is clear from the material on record that OP has sanctioned a loan of Rs.85 lakh to the complainant and others against the equitable mortgage of property no.RZ-72, Out of Khasra No.94/20/1, Gali no.14-A/5, Village Palam Sad Nagar, Palam Colony New Delhi. The loan

amount was disbursed as apparent from Annexure-1 & 2 (shown as Ex.CW1/1 and 2 in the affidavit by the complainant). The complainant applied for the foreclosure of the loan account and OP foreclosed the loan account after levying 4% foreclosure charges on the principal outstanding and applicable taxes as apparent from Annexure-3 (shown as Ex.CW1/3 in the affidavit by the complainant).

9. The OP has taken the plea that it was a business loan and foreclosure charges were levied in accordance with circular Ex.RW1/4 or Annexure-5 (shown as Ex.CW1/5 in the affidavit by the complainant).

10. The OP has sanctioned a loan to the complainant as well as to Ms. Tina Gupta and M/s Gupta Vijay K and Company. M/s Gupta Vijay K and Co. is a partnership CA firm of complainant and his wife.

11. Ms. Tina Gupta and M/s Gupta Vijay K and Co. are the co-borrowers. A co-borrower is someone who applies for a loan and shares joint responsibility for repaying the loan. The co-borrowers on the application are responsible for the repayment.

12. The Annexure-1 (shown as Ex.CW1/1 in the affidavit of the complainant) shows that type of loan is business loan. It was a credit facility. The loan was sanctioned against the mortgage of the property by the complainant and co-borrowers. The loan was not solely sanctioned to M/s Gupta Vijay K and Co. i.e. CA firm. The loan was sanctioned to complainant, his wife and M/s Gupta Vijay K and Co. The status of Co-borrower is not relevant as apparent from Annexure-6 (shown as Ex.CW1/6 in the affidavit of the complainant).

13. The circular Annexure-C4 (shown as Ex.CW1/4 in the affidavit of the complainant) shows that banks will not be permitted to charge

foreclosure charges/prepayment penalty on all floating rate term loan sanctioned to individual borrowers with immediate effect.

14. The OP has failed to explain how the sanctioned loan was a business loan. The loan has not been sanctioned to the firm. The loan has been sanctioned to the individual borrower i.e. Complainant. Ms. Tina Gupta and M/s Gupta Vijay K and Co. are the co-borrowers. Ms. Tina Gupta and complainant are partners of M/s Gupta Vijay K and Co. M/s Gupta Vijay K and Co. is a professional entity i.e. CA Firm and not a business entity. The status of co-borrowers is not be seen. All this shows that loan was disbursed to the individuals which was not for any business activity. The OP has not considered the entire facts in totality so OP cannot charges the foreclosure charges by taking shelter under Ex.RW1/4 or Annexure-5 (shown as Ex.CW1/5 in the affidavit of the complainant).
15. The above discussion shows that OP should not have levied foreclosure charges. There is deficiency of service as well as unfair trade practice on the part of OP.
16. Hence, in view of our discussion, the complaint of the complainant is allowed to the effect that OP shall refund the amount of Rs.388951.93/- with interest @10% p.a. from the date of filing the complaint till its realization. The complainant has undergone mental agony so he is entitled for compensation on this score also. The OP shall pay Rs.50,000/- towards compensation and litigation charges. The OP shall comply with the order within 45 days from the date of receipt of order failing which complainant is entitled for interest @10% p.a. on compensation from the date of order till its realization.

- A copy of this order is to be sent to all the parties as per rule.
- File be consigned to record room.
- Announced in the open court on 04.04.2024.

(R.C. YADAV)
(MEMBER)

(DR. HARSHALI KAUR)
(MEMBER)

(SURESH KUMAR GUPTA)
PRESIDENT