

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 2218 OF 2018

1. BINOD DOKANIA & ANR.

R/o. ABHIJEET MITTAL, FLAT NO. D-804, SECTOR 84,
GURUGRAM-122004

HARYANA

2. Mrs. Sushma Dokania

W/O. BINOD DOKANIA, C/o. ABHIJEET MITTAL, FLAT NO. D-804, SECTOR 84,
GURUGRAM-122004

HARYANA

.....Complainant(s)

Versus

1. IDBI BANK LIMITED

(Through its Managing Director) Shop No-202, Second Floor, AVA Court, Sector-47,
Gurgaon - 122018

.....Opp.Party(s)

BEFORE:

**HON'BLE MRS. JUSTICE DEEPA SHARMA,PRESIDING MEMBER
HON'BLE MR. SUBHASH CHANDRA,MEMBER**

For the Complainant :

Ms Anu Tyagi, Advocate

For the Opp.Party :

Mr Rajive R Raj, Advocate

Dated : 20 Feb 2023

ORDER

PER MR SUBHASH CHANDRA, MEMBER

This complaint has been filed under section 21 read with section 22 of the Consumer Protection Act, 1986 (in short, 'the Act') against the opposite party/ bank on the ground that the opposite party was guilty of deficiency in service in losing / destroying the original title documents of his residential flat which was deposited with the opposite party for securing a home loan taken from the Bank.

2. The facts, according to the complainants, are that in July 2010 they had approached the opposite party for a housing loan to buy a residential flat no. 409, 4th Floor, Block Siena, Mahagun Moderne GH 02, Sector 78, Noida, UP 201 301. A home loan of Rs.30,67,714/- was sanctioned on 05.07.2010 and in order to secure the said loan the complainants were required to deposit the original title documents of the said flat with the opposite party. The following documents in original pertaining to the flat were deposited by the complainants with the opposite party:

i. *Original allotment letter dated 19.06.2010 in favour of the complainants;*

ii. *Original NOC in favour of IDBI Bank Ltd., dated 25.08.2010;*

iii. *Original cash receipts nos. 5;*

iv. *Original money receipt Rs.1,44,750/-, Rs.31,995/-, Rs.1,70,000/-, Rs.37,192/-*

v. *Original money receipt Rs.1,51,517/-, Rs.1,51,517/- Rs.3,23,194/-*

vi. *Original money receipt no.REC001/15464/11-12 P dated 06.03.30212*

vii. *Original payment receipt no. REC0011/17456/12-13P dated 19.05.2012;*

viii. *Original payment receipt no. REC0011/04344/10-11P dated 04.09.2010*

ix. *Original payment receipt no.REC0011/04343/10-11P dated 04.09.2010;*

x. *Original money receipt of Rs.2,00,000/-, Rs.9736/-, Rs.1,21.074/-*

xi. *Original money receipt no.24000 dated 23.05.2013 and no. 2387 dated 14.05.2013;*

xii. *Original payment receipt no. REC0011/24881/13-14, REC0011/24744/13-14;*

xiii. *Original registered sale deed cum sub-lease deed document no.2538 dated 23.03.2016 in favour of the complainants;*

xiv. *Original tri-partite agreement dated 28.08.2010;*

xv. *Flat purchase letter;*

xvi. *Builder buyer agreement; and*

xvii. *Other payment receipts.*

3. Against the sanctioned home loan a sum of Rs.28,74,633/- was disbursed and the complainants made timely re-payments by way of instalments. On 25.01.2018 the complainants approached the opposite party to foreclose the home loan. The opposite party, vide e-mail dated 02.02.2018, confirmed that the original documents pertaining to the flat would be handed over at the time of fore closure of the home loan. Following the full and final payment towards closure of the home loan, the complainants made several requests for return of the original title documents on 07.03.2018, 22.03.2018 and 26.03.2018. While the opposite party confirmed on 07.04.2018 that the loan had been settled, it failed to return the original documents. The complainants complained to the opposite party vide e-mail dated 30.03.2018 regarding the non-delivery of the original documents on 07.04.2018. The opposite party thereafter conveyed on 21.04.2018 that the original title documents had been destroyed/ damaged on account of a fire in the Stockholding Documents Management Services Ltd., (SDMSL) on 11.12.2017. Complainants have alleged that the opposite party failed to take due care of the original title documents and accepted the foreclosure of the loans without disclosing its destruction. They have alleged that the opposite party failed to even provide a copy of the FIR in respect of this fire and loss of original documents or to take action of its complaint. It is also stated that the opposite party did not even provide a copy of the advertisement published by it in this regard. However, the opposite party provided a certified copy of the registered Sale Deed cum Sub Lease Deed on 05.05.2018 for the said flat which the complainants received under protest. It is alleged by the complainants that the loss of original title documents has created a defect of permanent nature with regard to the strength of the ownership title of the said flat, and on account of this, several efforts to sell the flat by them have not fructified. Their application in June 2018 to HDFC Bank for a loan was also declined by the said Bank as only the certified copy of the registered Sale Deed cum Sub Lease Deed was

available. The complainants allege that they have suffered a financial loss of Rs.1,05,00,000/- which is the current market value of the said flat based on the revised Cost Inflation Index.

4. The complainants aver that they have also paid Rs.13,98,732/- to the opposite party as interest on the home loan and the loss of the original title documents has caused them considerable mental agony and harassment for which they should be compensated. A legal notice dated 06.08.2018 was sent to the opposite party. The opposite party in their reply dated 24.08.2018, while admitting that the original documents were deposited to secure the home loan, also admitted that the documents were destroyed in the incident of fire in SDMSL. The complainants are before this Commission praying for directions to:

- a. *Direct the opposite party to lodge a complaint with the concerned police station for registration of an FIR for the loss of all the valuable original title documents of the property, i.e., Flat no. 409, 4th Floor, Block Siena, Mahagun Moderne GH 02, Sector 78, Noida, UP – 201 301 as detailed in paragraph no. 6 hereinabove and/ or in case already registered to provide the copy of said FIR; and*
- b. *Direct the opposite party to publish the public notice in the two newspapers (one English newspaper and another in vernacular) mentioning about the loss of original title documents of the property, i.e., Flat no. 409, 4th floor; Block Siena, Mahagun Moderne GH 02, Sector 78, Noida, UP 201 301 by the opposite party and thereby, giving appropriate time to general public to file the objection, if any; and*
- c. *Direct the opposite party to pay the market price of the property, i.e., Flat no. 409, 4th floor, Block Siena, Mahagun Moderne GH 02, Sector 78, Noida, UP 201 301 in lieu of the original papers/ title documents retained by the opposite party; and*
- d. *Direct the opposite party to give damages to the tune of Rs.1,05,00,000/- towards damages caused on account of loss of original property/ title documents of the property i.e., Flat no. 409, 4th floor; Block Siena, Mahagun Moderne GH 02, Sector 78, Noida, UP 201 301, which devalued the property in the open market; and*
- e. *Direct the opposite party to issue indemnity bond in favour of the complainants no.1 and 2, indemnifying the present and future losses of the complainants no.1 and 2; and*
- f. *Direct the opposite party to refund the interest amount to the tune of Rs.13,98,732/-, paid by the complainants no.1 and 2 to the opposite party on the said loan amount; and*

- g. *Direct the opposite party to pay a sum of Rs.20,00,000/- as compensation for causing mental stress, agony and harassment to the complainants no.1 and 2; and*
- h. *Direct the opposite party to pay interest @ 18% per annum on the aforesaid amount(s) from 07.02.2018, i.e., the date of repayment of the home loan till its actual realisation; and*
- i. *Direct the opposite party to pay the cost of litigation amounting to Rs.2,00,000/- to the complainants no.1 and 2; and*
- j. *Pass any other order (s) or direction (s) as this Hon'ble Commission deems fit and proper in the facts and circumstances of this case.*

5. The complaint was resisted by the opposite party by way of a written statement. It is admitted that loan had been sanctioned for Rs.30,67,764/- against which Rs.28,74,633/- had been disbursed @ 8.75% per annum to be repaid in 240 monthly instalments of Rs.27,110/- each. It is also admitted that the original documents had been obtained to secure the said loan. It is stated that the Bank has a centralised system of storage of original title deeds and loan documents of borrowers at Mumbai due to space constraints and that M/s Stock Holding Corporation of India (SHCIL) Projects Ltd., had been appointed by the opposite party for safe custody and storage of all such documents of its customers. A Service Level Agreement has been executed between the opposite party and SHCIL on 08.10.2015. It is, however, contended that at the time of fire incident on 11.12.2017 the documents were in the custody of M/s SHCIL and were covered under the *force majeure* clause. A copy of the letter dated 19.12.2017 by SHCIL to the concerned police station in Navi Mumbai regarding the incident of fire, spot panchnamma prepared, news-paper reports and letter dated 30.01.2018 from SHCIL to the opposite party (IDBI Bank) is placed on record. The opposite party has contended that it had pursued matter for return of documents with the SHCIL and had been informed vide letter dated 07.04.2018 that the said documents had been destroyed in the fire accident. Thereafter, the complainant at its own costs obtained a certified copy of the title document viz., registered Sale Deed on 23.03.2016 from the concerned Sub Registrar and handed over the same to the complainants on 05.05.2018. The opposite party contends that the complainant's Service Level Agreement dated 08.10.2018 with the SHCIL dated 12.10.2015 was executed by SHCIL indemnifying the opposite party against, "no claim costs, charged, damages, demands, loss liabilities or expenses of any nature and kind whatsoever and by whomsoever" that may be instituted or preferred against the IDBI Bank "for any loss, damages or claims arising out of all kinds of accidents, destruction, deliberate or otherwise direct or indirect" Therefore, it is contended that the present complaint is not maintainable as the complainants have not impleaded M/s SHCIL as a party to this complaint. It is also contended that although the disbursed loan amount was only Rs.28,74,633/- the claim has been inflated to Rs.1.05 crores only to invoke the pecuniary jurisdiction of the National Commission. It is accordingly prayed that the complaint be dismissed since the certified copy of the Sale Deed was provided to the complainant which under the law is the only substitute for an original registered sale document that is lost or destroyed.

6. By an additional affidavit dated 12.04.2021, the opposite party has subsequently brought on record a copy of the original Sale Deed dated 22.03.2016 which had since been traced and provided by SHCIL on 12.03.2021 as a consequence of its efforts to retrieve documents allegedly destroyed in the fire accident, along with the Sale Deed executed by the complainant with the builder, M/s Mahagun Real Estate Pvt., Ltd. However, none of the other documents have been retrieved and brought on record.

7. We have heard the learned counsel for both the parties and perused the material on record carefully.
8. Parties argued as per the written submissions. The complaints have relied upon the order of this Commission in Consumer Case no. 46 of 2014 – **Rajesh Gupta vs Axis Bank Ltd.**, decided on 27.08.2018 which had upheld the claim of the complainant who alleged that the opposite party had failed to return the documents which were entrusted to it and it had been held that the opposite party had failed to discharge its obligations towards the complainant. In the instant case, the opposite party had admitted the loss of original title documents taken to secure a home loan sanctioned to the complainants based upon a letter dated 07.04.2018 issued to them by SHCIL with whom they had a Service Level Agreement to store and safe guard such documents. Consequently, it had also obtained a certified copy from the Sub Registrar and provided the same to the complainants on 05.05.2018 once the fact of the loss of documents in the fire was brought to their notice by SHCIL. The objections of the opposite party that the complaint is based on an inflated claim for compensation since the loan amount was only Rs.28,74,633/- and that there has not been a proper joinder of parties as SHCIL have not been arrayed as an opposite party cannot be accepted. As far as joinder of parties concerned, at no point did the opposite party disclose to the complainants that the documents would be kept in safe custody with SHCIL or that they were indemnified against loss or destruction. It was only after the incident of fire that the opposite party on 21.04.2018 conveyed the same to the complainants after loan had been foreclosed. It is noteworthy that although the opposite party had already been conveyed about the fire accident took place on 11.12.2017 however, they chose not to disclose the same to the complainants. The claim of the complainant is based on their estimation of the market value of their flat which cannot be faulted since original title documents are a *sine quo non* for any transaction pertaining to sale or purchase of real estate. The claim for compensation and mental agony/ harassment is therefore, valid and justified.
9. However, in view of the fact that the original sale deed and the agreement between the complainants and M/s Mahagun Real Estate Pvt., Ltd., have been retrieved in original by SHCIL and made available to the complainant by the opposite party who had earlier obtained certified copy of the registered Sale Deed from the office of the Sub Registrar, the only issue which now remains is the compensation of the complainants for the loss of the other documents deposited with the opposite party. These documents include – original Allotment Letter, Builder Buyer Agreement, Flat Purchase Letter and original receipts of payments. All these documents are essential to establish the ownership title of the complainants to the flat in question and therefore, compensation for the same is a valid prayer.
10. The opposite party has not disputed that they have failed to return all the original title documents of the flat entrusted to them by the complainant. There is, therefore, deficiency in service on the part of the opposite party. Loss to the complainants is therefore, manifest. Absence of these documents would certainly make it difficult for the complainant to put his property on the market should they want to sell it. Documents such as the Builder Buyer Agreement, Flat Purchase Letter, full and final payment receipts issued by the seller are extremely essential documents to establish title to the property. The essential nature of these documents is vouched safe by the fact that the opposite party had required the complainant to deposit the same in original in order to secure the home loan advanced to the complainants.
11. In view of the foregoing facts and circumstances of the case we find merit in the complaint. The same is therefore, allowed.

The opposite party is directed to:

- i. issue indemnity bond in favour of the complainant regarding all the documents which have not been returned in original to the complainants;
- ii. pay Rs.20 lakhs to the complainants towards financial damages;
- iii. Pay Rs.1.00 lakh to the complainants towards mental agony and harassment;
- iv. Pay Rs.50,000/- to the complainants on account of litigation expenses.

12. The order shall be complied with by the opposite party within a period of four weeks from the date of pronouncement of the order failing which the amounts awarded shall be paid with interest @ 12% per annum from the date of filing of the complaint till realisation. The complaint stands disposed of in the above terms.

.....J
DEEPA SHARMA
PRESIDING MEMBER
.....
SUBHASH CHANDRA
MEMBER