

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 454 OF 2021

(Against the Order dated 11/05/2021 in Complaint No. 163/2019 of the State Commission Delhi)

1. ICICI BANK LIMITED
THROUGH ITS LEGAL MANAGER, ICICI BANK TOWERS NBCC PLACE PRAGATI
VIHAR BHISHMA PITAMAH MARG
NEW DELHI 110003

.....Appellant(s)

Versus

1. VISHNU BANSAL
S/O. RAMESH CHAND BANSAL, R/O. MII/104, 2B, VAIBHAV KHAND AMARPALI
ROYAL INDIRAPURAM
GHASZIABAD
UP 201010

.....Respondent(s)

BEFORE:

**HON'BLE MR. DINESH SINGH, PRESIDING MEMBER
HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE, MEMBER**

For the Appellant : Mr. Sumit Goel, Advocate with
Mr. Aditya Sharma, Advocate

For the Respondent : Mr. Hemant Gupta, Advocate with
Mr. G.P. Bansal, Advocate

Dated : 23 Nov 2022

ORDER

1. This appeal has been filed under section 51(1) of The Consumer Protection Act, 2019 in challenge to the Order dated 11.05.2021 of the State Commission in complaint no. 163 of 2019.

2. We have heard the learned counsel for the appellant (the “bank”) and for the respondent (the “complainant”), and have perused the record including *inter alia* the impugned Order dated 11.05.2021 of the State Commission and the memorandum of appeal.

3. Briefly, the complainant took a home loan from the bank in November 2005. A loan agreement was executed between the bank and the complainant on 30.11.2005. The bank provided a loan of Rs.30,74,100/- on floating rate of interest. The rate was 8.75% per annum at that time. The adjustable margin was minus 1.5%. In that manner the loan was first given at a rate of interest of 7.25% i.e. 8.75% (floating reference rate) minus 1.5% (the agreed margin). The loan was to be repaid in 240 equated monthly installments of Rs.24,297/- each.

4. The grievance of the complainant was that though the bank initially charged interest at the rate of 7.25% per annum but later on it increased the rate to 8.75% without intimating the complainant or taking his consent. The rate was again raised to 12.25%. The tenure was also increased from 240 months to 331 months. It is stated that due to this arbitrary act of the bank the complainant foreclosed his loan account with it and went to another bank. By that time the bank herein had already charged an extra amount of Rs.1,62,093/- from the complainant. The complainant approached the bank about his grievance but did not receive any satisfactory response. He then approached the banking ombudsman on 13.02.2010 but this also did not yield any result. Thus he filed a complaint before the District Commission. However the District Commission returned his complaint on ground of lack of pecuniary jurisdiction. He then approached the State Commission with his complaint.

The sole defence taken by the bank before the State Commission was that the interest rate and the number of equated monthly installments were increased only in terms of the provisions of the loan agreement executed between the bank and the complainant. It is stated that the agreement provided for floating rate of interest and the complainant signed the same after reading, understanding and agreeing to its contents.

5. The State Commission allowed the complaint after observing thus:

15. Relying on the above mentioned dicta of the Hon'ble National Commission it flows that even if the Opposite Party has been given the right to change the rate of interest charged on the loan, it does not automatically confer a power upon the Opposite party to increase or decrease of interest without apprising the borrower/Complainant about the change in interest charged or the number of EMIs. In simple terms, an opportunity must be afforded to the Borrower before changing the floating rate of interest.

16. Returning to the facts of the present case, the Opposite Party had the power to change the rate of interest charged or change the number of the EMIs, however, the Complainant was never apprised about the fact that the rate of Interest had been increased or the number of the EMIs has been changed. The Opposite Party was duty bound to disclose the aforesaid information to the Complainant in order to provide the complainant the option to either close the account or shift the account.

17. Consequently, we are of the view that the increase or decrease by the in the interest rates by the Opposite Party without taking the consent from the borrower/complainant amounts to Unfair Trade Practice.

And it granted the following relief to the complainant:

18. Keeping in view the facts of the present, we allow the following reliefs as prayed for by the Complainant:

I. We direct the Opposite Party to pay an amount of Rs. 1, 62, 093/- along with interest as per the following arrangement:

A. An interest @ 6% calculated from the date of institution of the present complaint i.e. 14.02.2019 till 11.05.2021 (being the date of the present judgment);

B. The rate of interest payable as per the aforesaid clause (A) is subject to the condition that the Opposite Party pays the entire amount on or before 30.06.2021;

C. In case the Opposite Party fails to refund the amount as per the aforesaid clause (A) on or before 30.06.2021, the entire amount is to be refunded with an interest @ 9% p.a. calculated from 14.02.2019 till the actual realization of the amount.

II. In addition to the aforesaid and taking into consideration the facts of the present case, the Opposite Party is also directed to pay to the complainant

A. A sum of Rs. 50,000/- as cost for mental agony and harassment;

B. And the litigation cost to the extent of Rs. 50,000/-.

6. We note that the State Commission allowed the complaint on essentially two distinct reasons, *one*, for not taking the complainant's consent before increasing (or decreasing) the rate of interest, and, *two*, for not informing the complainant about the changes in the rate of interest from time to time.

7. Learned counsel for the bank submits that the loan agreement executed between the bank and the complainant provided for floating rate of interest. The bank increased or decreased the rate on the basis of its uniform policy in this regard in the normal wont of its functioning and the same was applicable on all similarly placed borrowers including the complainant on the basis of similar loan agreements. Prior consent of the complainant or of any other similarly placed borrower was not required. In so far as informing the borrowers including the complainant is concerned, the bank placed its relevant notifications in the public domain on its website and also sent reset letters to the borrowers including the complainant from time to time whenever it increased or decreased the rate of interest. The bank was within its rights to change the rate of interest and the consequent number of monthly installments. He further submits that the observations of the State Commission that the increasing the rate of interest was an 'unfair trade practice' is patently bad both on facts and in law and is totally uncalled for and ought to be explicitly washed out. He however submits that purely as a goodwill and service gesture the bank is ready to pay an amount of Rs.1,00,000/- to the complainant while in no manner accepting or conceding any 'deficiency' or 'unfair trade practice' on its part.

8. Learned counsel for the complainant fairly accepts that the increase in the rate of interest was on the basis of the loan agreement executed between the bank and the complainant wherein floating rate of interest was agreed to. He however submits that the essential grievance of the complainant is that the bank did not inform the complainant about the increase in the rate of interest and in the number of monthly installments. Had the bank intimated him about the same he would have taken timely steps to get his loan transferred to another bank with a lower rate of interest. He also expressly submits that the complainant never received any reset letter from the bank.

9. In so far as taking consent of the complainant is concerned, we are of the considered view that the bank was well within its rights to increase or decrease the rate of interest under the floating rate of interest provided for in the loan agreement executed between the bank and the complainant and any additional or further consent from the complainant was not required, the same having already been agreed to in the loan agreement itself. There is nothing on record to show that either the bank had fixed the rates of interest in any erroneous way contrary to the principles and the guidelines applicable or had differentiated between similarly situate borrowers in this respect.

10. In so far as the aspect of informing the complainant is concerned, the learned counsel for the bank has pointed out during his arguments the dates on which the relevant notifications were put in the public domain on the bank's website and has also indicated the dates on which the relevant reset letters were

sent to the complainant from time to time. Learned counsel for the complainant does not dispute the fact of the notifications being placed on the bank's website but he submits that the reset letters were never received by the complainant.

As per a fundamental principle contained in section 114 of the Indian Evidence Act, the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case; illustration (e) specifically says that the court may presume that judicial and official acts have been regularly performed.

In the instant case there is nothing on record to bring out enough reason to presume otherwise. On the other hand learned counsel for the bank has meticulously researched and pointed out the dates of placing the relevant notifications on the bank's website and the dates of sending the reset letters to the complainant even though they relate to the period 2006 to 2008 i.e. about 1 ½ decades back.

Even otherwise, monthly installments were being deducted from the complainant's bank account towards repayment of his home loan and he was servicing his loan on a regular continuing basis. A reasonable man of ordinary prudence in the normal course would be aware of his repayment schedule(s), when the deductions were being made from his own bank account.

As such the arguments regarding not informing the complainant do not reflect much merit in the present facts and context.

11. Sequel to the discussion above, findings of 'deficiency' or 'unfair trade practice' on the part of the bank cannot sustain.

The appeal is allowed and the State Commission's impugned Order is set aside.

12. However, considering the submission made on behalf of the bank that it is ready to pay a sum of Rs.1,00,000/- to the complainant as a goodwill and service gesture, without any acceptance or concession of 'deficiency' or 'unfair trade practice' on its part, the bank is directed to pay the said amount to the complainant within eight weeks from today. The amount if any deposited by the bank with the State Commission in compliance of this Commission's Order dated 12.08.2021 along with interest if any accrued thereon may be released by the State Commission to the bank after verifying to its satisfaction that the requisite payment of Rs.1,00,000/- has been made by the bank to the complainant.

13. So disposed.

14. The Registry is requested to send a copy each of this Order to the parties in the appeal and to their learned counsel immediately. The stenographer is requested to upload this Order on the website of this Commission immediately.

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DINESH SINGH
PRESIDING MEMBER

.....J
KARUNA NAND BAJPAYEE
MEMBER