

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

U.T., CHANDIGARH

Appeal No. : 188 of 2019

Date of Institution : 26.08.2019

Date of Decision : 13.12.2021

ICICI Bank Limited, SCO No.9-10-11, Sector 9-D, Chandigarh, previously situated at SCO No.174-175, 2nd Floor, Sector 9, Chandigarh through its Branch Manager.

.....Appellant/Opposite Party.

Versus

Ashwani Bhalla S/o Sh. S. K. Bhalla, resident of House No.5024, Sector 38-West, Chandigarh.

...Respondent/Complainant.

Appeal under Section 15 of the Consumer Protection Act, 1986.

BEFORE: MRS. PADMA PANDEY, PRESIDING MEMBER.

MR. RAJESH K. ARYA, MEMBER.

Argued Physically by:-

Er. Sandeep Suri, Advocate for the appellant.

Sh. Ashwani Bhalla, respondent in person.

PER RAJESH K. ARYA, MEMBER

This appeal has been filed by the opposite party – ICICI Bank Ltd. (appellant herein) challenging order dated 11.04.2019 passed by District Consumer Disputes Redressal Forum-II, U.T., Chandigarh (now District Consumer Disputes Redressal Commission-II, U.T., Chandigarh) (in short ‘District Commission’) vide which, consumer complaint No.145 of 2018 filed by the complainant (respondent herein) was allowed directing the appellant to pay back Rs.9,78,643/- to the respondent within 30 days from the date of receipt of copy of order.

2. Briefly stated the facts are that the respondent availed loan of Rs.16 Lakhs against property, repayable in 120 months with floating reference rate (FRR) of 10:25%. Rs.21,590/- per month was the EMI for 120 months as per loan agreement, Annexure C-2. It was his case that the Bank changed rate of interest from time to time against agreed upon interest rate i.e. 10.5% and charged higher rate of interest ranging between 11%to

16% without his consent and without any intimation to him. It was further stated that on his request, the rate was reduced from 15.75 to 13.75 w.e.f. 11/2012, thereafter, it again increased to 14%. It was further stated that due to charging higher rate of interest, the loan tenure of 120 months, which was to end up in January 2017, also increased. It was further stated that due to aforesaid act of the Bank, the complainant foreclosed his loan account by paying Rs.8,86,931/- and further due to increase in interest rate at least 15 times, he had to pay approx. Rs.10 Lakhs extra to the opposite party Bank.

3. On the other hand, while contesting the complaint, the appellant – Bank, in its reply, stated that as per the sanctioned letter and loan agreement, duly signed and accepted by the respondent, the rate of interest was floating rate of interest and the adjustable interest rate applicable to the complainant on loan account was subject to changes. It was further stated that whenever there was increase in rate of interest, the Bank increased tenure of loan of the borrower subject to permissible limits in order to avoid burdening the customer with higher EMI, as already mentioned in the loan agreement and the respondent was duly informed about change in rate of interest from time to time. It was further stated that for conversion of his loan account, the respondent duly paid Rs.3,720/- as conversion fee, where after, he closed his loan account in January 2018 by making balance payment of Rs.8,86,931/-. It was further stated that no excess amount at any point of time was ever charged from the complainant.

4. On the date of arguments, the Counsel for the appellant Bank and the respondent himself appeared physically before this Commission and argued the matter.

5. The finding given by the District Commission in the impugned order to allow the complaint of the respondent is that the appellant failed to establish that it ever intimated the respondent before or after change in levy of rate of interest, which was in violation of the their own agreement. It also held that the Bank also failed to prove whether enhanced rate of interest was compatible with the rate of interest as prevalent during the said period in question or it was permissible under any guidelines of the Reserve Bank of India.

6. Laying challenge to the order of District Commission, the appellant Bank in its appeal has stated that the loan was advanced on adjustable interest rate that is floating rate of interest, which the respondent has already admitted in Para 3 of his complaint. It was further stated that FRR since inception of the loan account kept on changing i.e. increasing and decreasing. The appellant cited the judgment of Hon'ble Apex Court in **Syndicate Bank Vs. R. Veeranna&Ors., AIR 2003 SC 2122; Central bank of India Vs. Ravindra&Ors., AIR 2001 SC 3095** and that of Hon'ble National Commission in case **ICICI Bank vs. Ganga Singh Shekhawat**, Revision Petition No.2641 of 2013, decided on 24.02.2015, to contend that merely by not intimating to the respondent about increase of rate of interest, it cannot be inferred that rate of interest could not have been increased when loan had been taken on floating rate of interest. On behalf of the appellant, it was submitted that as per Section 21-A of Banking Regulation Act, rate of interest charged by Banking companies is not to be subjected to scrutiny by Courts. It was further stated that the District Commission cannot enter into the realm of a case of rendition of account. In this regard, the appellant cited **Bihar State Housing Board Vs. Chairman-cum-Mannaging**

Director and others, 1996) CP{J 228 (NC) and Vishal Roadways Vs. Economic Traders (Gujarat) Ltd., (1998) NCJ (NC)-539. Further, the appellant placed reliance on the judgment of this very Commission in the case of **BirbhanGoyal Versus ICICI Bank Ltd.,** First Appeal No.382 of 2009 decided on 24.05.2011, wherein the rate of interest on the loan obtained was floating one, and while setting aside the order of District Forum, this Commission held that the parties were bound by the terms and conditions of the agreement and the documents, executed between the parties. It was stated that the appeal be accepted and the impugned order be set aside.

7. Contesting the contentions raised by the appellant in its appeal, the respondent supported the reasoning given by the District Commission in its order and he prayed for dismissal of the appeal.

8. After having heard the Counsel for the parties and going through the record and written arguments filed on behalf of both the appellant, we are of the considered view that District Commission erred in appreciating the facts and law and wrongly passed the impugned order while allowing the complaint of the respondent and as such, the impugned order is liable to be set aside for the reasons to be recorded after. A bare perusal of Annexure C-1, which is Facility Agreement, transpires that under Clause 9 i.e. *"DETAILS OF THE FACILITY BY WAY OF LOANS"*, each loan is referred to as tranches and under the heading **"Tranche 1"**, under Clause (2)-Interest on Tranche 1, the respondent opted for "Adjustable Interest Rate" at Sr. No.(b) and further under the said Adjustable Interest Rate, FRR was 10.25% per annum as on the date of execution of the said Facility Agreement, which may vary + - margin of 0.25% plus applicable interest tax or other statutory levies. Each and every page of this agreement was duly signed by the respondent alongwith the co-applicant, who was his wife. Not only this, in Clause 30A of the Standard Terms and Conditions for facilities for/against properties, which was part of the Facility Agreement, 'Adjustable Interest Rate' and its applicability was provided in detail as under:-

"30(A). Adjustable Interest Rate:

If the rate of interest applicable to the Borrower/s is Adjustable Interest Rate, the following shall apply:

(a)The applicable interest rate shall be changed within each Reset Period, based on the then prevailing FRR and the borrower/s shall thereafter pay interest on the Facility at such new rate on the first day of the month following the Reset Period in which FRR is changed and the Rest Period will be as selected in the Schedule by the Borrower/s.

(b) xxxxxx

(c) The Adjustable Interest Rate applicable to the Facility shall be on the basis of FRR prevailing on the date of final disbursement.

(d) The Adjustable Interest Rate applicable to the Facility shall be on the basis of FRR prevailing on the said time shall be applied as follows:-

(1) If the Borrower/s has already commenced payment of EMI before the beginning of the Reset Period in which FRR has been revised; on the outstanding principal amount of the Facility as at the beginning of the next Rest Period, or

(2) If the Borrower/s has not commenced payment of EMI: on the total amount of the Facility drawn prior to revision of the FRR.

Explanation: In the events (1) and (2) above, any pre-payments made by the Borrower/s during the financial year shall be taken into account.

(e) Subject to the provisions of the Facility Agreement and the other Transaction Documents:

(1) Save and except as provided under (2) below, for administrative convenience the EMI amount is intended to be kept constant irrespective of variations in the Adjustable Interest Rate, and therefore, the number of EMIs is likely to vary. No intimation shall be given by ICICI Bank as to further or other or reduced number of EMIs required to be paid by the Borrower/s upon each/any change in the Adjustable Interest Rate. Provided however that the Borrower/s shall be intimated of the information as to the applicable/applied Adjustable Interest Rate during the preceding financial year on an annual basis, within such time at the end of the financial year as ICICI Bank may determine.

(2)“Notwithstanding anything to the contrary contained in the Facility Agreement and/or the other Transaction Documents, having regard to Adjustable Interest Rate for the time being, ICICI Bank, at its sole discretion, shall be entitled to increase the EMI amount suitably if;

(i) The EMI is not adequate to cover interest payments in full, or

(ii) The EMI results in the term of the Facility exceeding the retirement age or 65 years for the Borrower/s, as applicable; or

(iii) If so required by the Bank in its sole discretion for any reason whatsoever from time to time, the Borrower/s shall be required to pay such increased EMI amount and/or the differential amount resultant as determined by ICICI Bank in its sole discretion and intimated to the Borrower/s.

(f) ICICI Bank may, in its sole discretion, having regard to the Adjustable Interest Rate, reduce the EMI amount and in such event, the Borrower/s shall adhere to the procedure prescribed by ICICI Bank in its sole discretion and to do all such acts or deeds as ICICI Bank may require in order to give affect to such reduced EMI amount.

(g) The Borrower/s will repay the Facility as stipulated herein, subject to any other changes in the amortization schedule as communicated by ICICI Bank in writing to the Borrower/s.

(h) ICICI Bank may vary the FRR from time to time in such manner as ICICI Bank may deem fit in its sole discretion.”

9. Even in the Offer Letter for Loan Facility, Annexure C-2, issued to the complainant on 1.12.2006, "Type of Interest" was mentioned as "Floating Rate of Interest". Thus, undoubtedly, the rate of interest was floating one subject to change on the basis of increase or decrease in FRR and EMIs could be varied by the appellant Bank from time to time on account of variation of adjustable amount, due to increase in the rate of interest, as the loan was taken on floating rate of interest. In our view, the respondent was bound by the terms and conditions, of the Facility Agreement and the Officer letter. It is settled law that the Consumer Fora cannot alter the terms and conditions, agreed to between the parties. The agreement is required to be interpreted, in accordance with the terms and conditions, contained therein. From date one i.e. the date on which offer letter was issued and the respondent signed each and every page of the Facility Agreement, he was fully aware and in knowledge of the terms and conditions of the Facility and that the rate of interest was adjustable/floating interest rate. Now at later stage, he could not agitate the issue qua increase in the interest rate, which changed from time to time based on change in FRR. As regards the contention and as observed by the District Commission that the respondent was never intimated qua change in interest rate, the Hon'ble Supreme court in **Syndicate Bank's case (supra)** has held as under:-

"The High Court while holding that the party is bound to pay the interest at the agreed rate took the view that the bank could not automatically change the increased rate of interest merely on the basis of rise of interest on account of RBI circulars. It is not a case of automatically charging the increased rate of interest; change of higher rate is based on agreement between the parties. The high court was clearly in error in holding that the principles of natural justice were violated on the ground that the defendants were not put on notice before enhancing the rate of interest when the parties are bound by the terms of the [contract](#)."

10. Similar is the view held by Hon'ble National Commission in **ICICI Bank Vs. Ganga Singh Shekhawat** case (supra), wherein it was held that "Thus, it becomes clear that even without notice petitioner was entitled to enhance rate of interest on the basis of rise of interest by RBI." Similar was expressed by this Commission in **Birbhan Goyal's** case (supra), which appeal was filed by the complainant against dismissal order of District Forum qua increase in rate of interest which was floating. This Commission dismissed the appeal of the complainant. Therefore, in view of law settled by the Hon'ble Apex Court and Hon'ble National Commission, we are of the considered view that when the respondent was bound by the Facility terms and conditions, as extracted above and was having complete and full knowledge that the rate of interest was adjustable/floating one, then in that eventuality, the argument raised that he was not intimated qua change in the rate of interest from time to time cannot be accepted and the District Commission erred in observing so in its order, which observation goes against the terms and conditions duly signed and accepted by the respondent himself and the law settled by the Hon'ble Apex Court and Hon'ble National Commission, as discussed above. However, revision of the rate of interest was duly informed by the appellant -Bank to the respondent/complainant from time to time as established from copies of such intimations/letters placed on record by the appellant-Bank dated 01.07.2015, 07.11.2015, 15.10.2016, 11.02.2017, 09.05.2017 and 11.09.2017. It is also settled law that the Consumer Fora cannot go into the issue of rendition of accounts as

held in the judgments relied upon by the appellant Bank.

11. In view of above, the impugned order passed by the District Commission is not sustainable in the eyes of law is liable to be set aside and his complaint is liable to be dismissed.

12. For the reasons recorded above, the appeal is allowed and the impugned order dated 11.04.2019 is set aside. Consumer Complaint No.145 of 2018 stands dismissed with no order as to costs.

13. Certified copies of this order be sent to the parties free of charge.

14. File be consigned to the Record Room after completion.

Pronounced.

13.12.2021.

sd/-

[PADMA PANDEY]

PRESIDING MEMBER

sd/-

[RAJESH K. ARYA]

MEMBER

SCDRC, Chandigarh