
(2024) 07 CCI CK 0003

Competition Commission Of India

Case No: Case No. 34 Of 2023

Anil Bansal

APPELLANT

Vs

Indiabulls Housing Finance
Limited. And Others

RESPONDENT

Date of Decision: July 22, 2024

Acts Referred:

- Competition Act, 2002 - Section 3(1), 3(2), 4, 4(2)(a)(ii), 4(2)(c), 19(1)(a), 19(3), 19(4), 26(2), 33

Hon'ble Judges: Ravneet Kaur, Chairperson; Anil Agrawal, Member; Sweta Kakkad, Member, Deepak Anurag, Member

Bench: Full Bench

Judgement

Order under Section 26(2) of the Competition Act, 2002

1. The present Information has been filed by Mr. Anil Bansal, director of M/s Karmyogi Hotels & Buildcon Ltd ('Informant') under Section 19(1)(a) of the Competition Act, 2002 ('Act') alleging contravention of the provisions of Section 3(1), 3(2), 4(2)(a)(ii) and 4(2)(c) of the Act by Indiabulls Housing Finance Limited ('OP-1') and its officers (OP-2 to OP-20), all collectively referred to as 'other OPs'. OP-1 and other OPs are collectively referred to as 'OPs'.

2. OP-1 is stated to be a company that claims expertise in providing loans against property. Other OPs are the ex-Chairman, Chairman, Vice Chairman, Managing Director, Executive Director, Financial Officer, and other officers of OP-1 and are/were responsible for the day-to-day business operations of OP-1. These individuals are alleged to have been directly involved in the promotion, sales and marketing activities of OP-1.

Facts and Allegations as stated in the Information

3. The Informant has alleged that it was induced to believe by the OPs through misleading and deceptive advertisements that they are a prominent entity offering loans against property at the most favourable interest rates.
4. Based on the representations and advertisements made by OP-1, the Informant entered into an agreement to avail a Loan against Property (LAP) at a floating rate of interest from OP-1. It availed two LAP facilities. The first loan was sanctioned on 01.03.2013 at an annual interest rate of 13.25% per annum ('First Loan') for which an Equated Monthly Instalment ('EMI') amount of ₹3,21,180/- was fixed; the period of repayment being 120 months. The Informant availed another LAP facility at a floating rate of interest of 13.25% per annum from OP-1 on 01.06.2013 ('Second Loan'). The First Loan and Second Loan are collectively referred to as 'Loans'. EMI for second loan was fixed at ₹60,316/- with a total repayment period of 121 months.
5. The Informant received various email communications during 2013 to 2023 whereby OP-1 is alleged to have increased its benchmark rate/Floating Reference Rate (LFRR).
6. During the period, the Informant sent an email to OP-1 on 30.04.2015, wherein the Informant requested OP-1 to furnish the loan statements for both the Loans since he intended to settle the respective accounts. The Informant again forwarded the said email to OP-1 on 01.06.2015. The Informant sent similar emails on 27.04.2016, 19.07.2016, 14.06.2017, 19.06.2017, 18.09.2017, 23.10.2017 and 25.03.2023 to the OP reiterating its request to furnish the loan statements/clearance certificate for the Loans in order to settle the respective accounts or otherwise reduce the exorbitant amount of rate of interest charged from the Informant. Despite these requests, OP-1 neither provided the Informant with account statement for the Loans nor communicated the outstanding loan amount payable by the Informant.
7. The Informant lodged criminal complaints against OP-1 in June 2018 over frequent increase in interest rates on loan accounts on account of breach of trust. On 13.05.2019, the Informant also sent a legal notice to furnish the statement of accounts.
8. The Informant has alleged that it was assured that the interest rate charged on the Loans would be based on OP-1's LFRR but it had been consistently increasing the LFRR. The unilateral increase in the LFRR has led to an increase in the number of instalments.
9. The Informant has averred that the last instalment on 03.03.2023 was duly paid but OP-1 failed to issue no-dues certificate or acknowledgment letter of the loan. The Informant sent an email on 25.03.2023 in this regard. The Informant has alleged that OP-1 is unlawfully demanding further EMIs for additional months without providing any justification. It is further threatening the disposal of the mortgaged property if these additional payments are not made. On 27.03.2023, OP-1 provided repayment schedule for the Loans indicating increase in EMIs by several additional months as against the repayment schedule shared alongwith

the letter dated 16.03.2013 and 20.06.2013 shared with the Informant. The Informant lodged another criminal complaint for financial fraud on 27.03.2023.

10. The Informant has averred that according to the RBI Circular dated 24.05.2007 and the master circular dated 02.07.2012, the interest rate cannot be modified, reviewed, or altered without prior notice and consent from the borrower. Moreover, in line with the RBI Guidelines dated 22.01.2009, the interest rate should be expressed on an annualized basis to ensure the borrower's awareness of the exact interest rate applicable to them. The interest rate must not be excessive, as stated in the RBI circular dated 24.05.2007.

11. The Informant has alleged that the loan agreement conspicuously lacks any provision for the revision of interest on a monthly basis or any duration shorter than a month and that OP-1 had an obligation to disclose that the LFRR would increase progressively and in an exorbitant manner. However, contrary to this obligation, OP-1, through its representatives, intentionally assured and convinced the Informant and the general public that the floating interest rate was favourable for obtaining the loan, as it was portrayed to be a low-rate option with the possibility of future interest rate reductions.

12. The Informant has averred that the intention of OP-1 is to limit consumer mobility and curtailment of their options. The Informant has also alleged that OP-1 entices potential new clients by encouraging them to secure loans under floating rate of interest scheme and profiting out of it. The Informant has tabulated the comparison of RBI repo rate and interest charged by OP-1.

S. No.	Month and Year of Change	Repo Rate	Interest charged by OP-1
1.	May, 2013	7.25%	13.25%
2.	September, 2013	7.50%	14.50%
3.	December, 2013	7.75%	14.50%
4.	January, 2014	8.00%	14.50%
5.	January, 2015	7.75%	14.50%
6.	March, 2015	7.50%	14.50%
9.	April, 2016	6.50%	14.50%
10.	October, 2016	6.25%	14.50%
11.	April, 2018	6.00%	15.00%
12.	June, 2018	6.25%	15.20%
13.	August, 2018	6.50%	15.50%
15.	February, 2019	6.25%	17.50%
16.	April, 2019	6.00%	17.50%
17.	June, 2019	5.75%	17.50%
18.	August, 2019	5.40%	17.50%
19.	October, 2019	5.15%	17.50%
20.	March, 2020	4.40%	17.50%
21.	May, 2020	4.00%	17.50%
22.	May, 2022	4.40%	17.50%
23.	July, 2022	4.90%	19.40%
24.	August, 2022	5.40%	19.40%
25.	October, 2022	5.90%	19.90%

26.	January, 2023	6.50%	20.75%
27.	February, 2023	6.50%	21.00%

13. The Informant has alleged that after influencing the Informant by providing initial lower interest rates, OP-1 undertook a pattern of increasing the interest rates despite reduction in repo rates which led to increase in its profits. OP-1's objective is to retain customers and prevent them from opting for other alternative arrangements which has stifled competition amongst banks, financial institutions and finance companies leading to lack of innovation in new products. Further, it restricts the ability of new banks or institutions to offer lower interest rates to attract new business opportunities. In the event an individual wishes to transfer their accounts to another bank, they are constrained to pay a foreclosure penalty on their loans and thus, gets dissuaded from pursuing other options. A customer cannot shift from one bank to another on account of pre-payment penalty and new financial companies are unable to get customers which is stifling competition in home loan market. The Informant has stated this to be an unfair trade practice. The imposition of frequently high rate of interest and lack of pre-payment support (imposition of pre-payment penalty) results in creation of barrier for new entrants in the market, thus causing Appreciable Adverse Effect on Competition (AAEC) in the market as per Section 19(3) of the Act. Therefore, under Section 3(1) and 3(2) of the Act, these agreements entered into by the banks are anti-competitive and therefore, void.

14. The Informant has alleged that OP-1 has the biggest share in the area of Delhi and NCR and thus, has a dominance in terms of Section 19(4) of the Act. OP-1 has complete market power to attract customers as they are providing home loan at the lowest rate of interest as compared to prominent service providers to reduce competition or eliminate competitors and has capacity and ability to affect the competition in the market in its favour.

15. The Informant alleged that OP-1's unilateral increase in the rate of interest, without its consent or authorization to raise the monthly instalment is unjust and indicates an abuse of its dominant position by imposing such a higher rate of interest resulting in the restriction of services available to the Informant. It has further alleged that the OPs extended the loan term without seeking consent or providing any notice to the Informant which demonstrates their abuse of dominant position and manipulation of the Loan Agreement resulting in restriction of services available to the Informant. The OPs have unjustly enriched themselves by inducing the Informant to make payments through Electronic Clearance Service (ECS).

16. It is the case of the Informant that the OPs' acts also demonstrate that certain elements within section 19(3) of the Act are applicable concerning the practices employed by banks, which include establishment of barriers to entry for new participants in the market, absence of growth benefits to consumers, resulting in long term consumer detriment and impeding economic development by negatively impacting consumer surplus and hindering market entry for new participants.

17. OP-1 has indulged in after-market abuse whereby the OPs after granting the loan got indulged in anti-competitive activities and unfair trade practices and increased the rate of interest as per their policies under the garb of floating rate of interest and abused their dominant position.

18. Based on the Information filed, the Informant has alleged the following:

18.1. The agreement between the banks and consumers, entailing the imposition of higher rate of interest and penalties for loan foreclosure, constitutes an anti-competitive action, rendering it void in accordance with the provisions of Section 3(1) and 3(2) of the Act.

18.2. In violation of Section 4 of the Act, OP-1 is engaging in unfair trade practices, taking advantage of its dominant position over the Informant. They are imposing unjust, excessively high rates of interest which not only contravene fairness but also exhibit discriminatory tendencies.

19. The Informant has filed an application under Section 33 of the Act, inter alia, alleging irreparable loss to the Informant on account of the imposition of unfair and discriminatory conditions in their services by OP-1. It has averred that the balance of convenience lies in its favour and the acts of the OPs are causing irreparable loss to it. Thus, it has prayed as under:

19.1. Direct the Opposite Party to tender all the records forming the basis of continuous increase of the lending rate and not to increase the rate of interest till the disposal of the present case without any prior information;

19.2. Direct the Opposite Party to stop deducting additional EMIs;

19.3. Direct the Opposite Party not to misuse the ECS given by the Informant to the Opposite Party; and

19.4. Pass such other or further order/s as this Hon'ble Commission may deem fit.

20. The Informant has prayed to the Commission as under-

20.1. Direct the Opposite Party to cease and desist from further engaging in the manipulations of the said agreement especially the Floating Reference Rate (LFRR) or any abusive exercise of dominant position;

20.2. Direct that the agreement in question to undergo necessary modifications as may be specified in the Commission's order, in accordance with the facts presented in the Information;

20.3. An investigation be conducted concerning the manner and the mode of charging rate of interest from borrowers by OP-1;

20.4. Pass directions restraining the Opposite Party from deducting additional EMIs and misusing the ECS given by the Informant;

20.5. Direct the Opposite Party to issue a no-dues certificate or acknowledgement letter to the Informant, confirming the full repayment of the loan amount;

20.6. Direct the Opposite Party to refund the Informant the surplus amount collected, accompanied by interest calculated at a rate comparable to that which the Opposite Party had levied purportedly due to the swift escalation of the LFRR; and

20.7. Pass such other or further order/s as this Hon'ble Commission may deem fit.

21. The Informant also filed an application for urgent hearing in the matter.

22. On 05.06.2024, the Commission considered the matter and decided to pass an appropriate order in due course.

Analysis of the Commission

23. The Commission perused the material available on record and information available in public domain. The Commission notes that the Informant is mainly aggrieved with the alleged unfair and discriminatory increase in the rate of interest charged by OP-1. The Informant has alleged that due to imposition of high rate of interest, frequent increase of rate of interest and not allowing pre-payment of Loans (imposition of pre-payment penalty) resulted in the creation of barriers for new entrants in the market, as consumers would be disinclined to switch to a new entrant due to the apprehension of incurring losses. It is also alleged that the competition gets adversely affected as consumers face hindrance in the form of penalties when they switch to another bank. Therefore, the conduct of OP-1 allegedly amounts to be in violation of Sections 3(1) and 3(2) of the Act. It is also alleged that imposing unjust and excessively high rates of interest contravene provisions of Section 4 of the Act.

24. The Commission observes that in the past cases containing similar allegations were filed against OP-1 [(Case No. 06 of 2018 Mr. Chirag S. Shastri & Others Vs. Indiabulls Housing Finance Limited & others (decision on 02.01.2019) and Case No. 43 of 2016 Onicra Credit Rating Agency of India Limited Vs. Indiabulls Housing Finance Limited. (decision on 03.02.2017)].

25. For the purpose of analysis of conduct of OP-1 under the ambit of Section 4 of the Act, the Commission deems appropriate in the present matter to delineate relevant market as '*provision of loan against property in India*'. The Commission notes that the Informant has suggested that OP-1 has the biggest share in the area of Delhi and NCR and therefore is dominant. The Commission also notes from the information available in public domain that OP-1 is a housing finance company which is India's third largest non-bank mortgage lender in the country and is regulated by the Reserve Bank of India (RBI).

(Annual Report 2022-23 of OP-1) As per Annual Report 2022-23 of OP-1, besides providing home loans for Resident Indians and Non-Resident Indians, it also offer loans to small businesses and Micro, Small and Medium Enterprises (MSMEs), against their properties and home loan balance transfers. Further, it is observed from the information in public domain that the relevant market appears to be competitive with the presence of large number of banks and Non-Bank Financial Companies (NBFCs) and housing finance companies and thus, dominance of OP-1 is not established in the aforesaid relevant market. Further, the allegation of aftermarket abuse is misplaced since the loan services of the nature impugned herein do not involve any aftermarket as alleged by the Informant and is, thus, rejected.

26. In view of the above, the Commission is of the view that there is no *prima facie* case made out under the provisions of Section 4 of the Act. As far as the provisions of Section 3 of the Act is concerned, the agreement with an end-consumer like in the present case is not envisaged as an anti-competitive agreement under Section 3 of the Act and therefore, no case is made out under the provisions of Section 3 of the Act.

27. In view of the above, the Commission is of the view that *prima facie* there is no competition concern arising in the present matter under the provisions of Section 3 and Section 4 of the Act and therefore, the matter is directed to be closed forthwith under Section 26(2) of the Act.

28. The Secretary is directed to communicate the decision of the Commission to the Informant, accordingly.