(2011) 04 NCDRC CK 0053

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Snehal Devdatta Patil		APPELLANT
	Vs	
IDBI Home Finance Ltd		RESPONDENT

Date of Decision: April 5, 2011

Citation: 2011 0 NCDRC 232

Hon'ble Judges: Ashok Bhan , Vineeta Rai J.

Final Decision: Appeal dismissed

Judgement

1. THE Petitioners herein who were the complainants before the District Forum had got sanctioned a housing loan for Rs.9,50,000/- from the Respondent for purchase of two residential flats on the 3rd and 4th floors of a building which was to be constructed on a plot of land at Panvel. Subsequently the Petitioners decided to purchase only one flat being constructed on the 4th floor of the building and accordingly the loan amount for the housing loan was as mutually decided reduced to Rs.6,50,000/-. THEreafter, the Petitioners alleged that although all formalities for sanctioning the loan had been completed, Respondent did not disburse any loan amount. Petitioners informed the Respondent that 80% of the work was completed and it was thus necessary to disburse the loan because work had come to a standstill and the builder would complete the premises only if at least Rs.3 lakhs was paid to them. Respondent, on their part stated that as per the report of a Government approved surveyor, it was noted that "plaster work was under progress. Two additional floors are being constructed over existing Ground + 2 buildings, but work had stopped at present". This fact was also admitted by the Petitioners in their letter dated 17.10.2006. THE plea of the Petitioners that the work had been stopped by the builders because of shortage of funds which could have been made good if the loan sanctioned was released, was not agreed to by the Respondent on the grounds that their business is to sanction and disburse loans and not to finance the builders to complete their construction.

2. AGGRIEVED by this stand of the Respondent, Petitioners filed a complaint before the District Forum claiming a sum of Rs.10 lakhs as compensation along with interest @ 17% per annum from 29.02.2008 till realization. The District Forum rejected the complaint on the grounds that as per Condition No.5 of the terms and conditions on the basis of which the loan was sanctioned, the loan was to be disbursed as per the progress of work of the construction and the Respondent was well within its right not to disburse the sanctioned loan because the builder has stopped construction. It was also noted by the District Forum that Respondent had stated that it is still ready to disburse the amount of loan once the construction work is in progress.

Aggrieved by this order of the District Forum, Petitioners filed an appeal before the State Commission which was rejected. The operative part of the order of the State Commission reads as follows:

"'"'.it was the sole discretion of the financial institution to disburse the loan on getting satisfied about the fulfillment of terms and conditions on which the loan was offered and which inter alia included amongst others about the progress of construction work. Even flat inspection report to which the reference is made by Ld.Counsel mentions that "plaster work under progress. Two additional floors are being constructed over existing Ground + 2 building. But, work has stopped at present." Replying upon this and after having considering the admission given by Complainant No.2 " Devdatta Chandrakant Patil, about the state of affairs about progress of that the work and after taking into consideration the fact that financial institution showed its willingness to release the further loan amount only it the progress with the construction is noticed, we find no reason to take different view than what has been taken by the Forum below. There is no deficiency in service on the part of financial institution and as such, the dismissal of consumer complaint is proper."

Hence, the present revision petition.

3. LEARNED counsel for both parties were present at the time of admission/hearing. LEARNED counsel for Petitioners stated that it was not correct to state that the work on the 4th floor had not yet started. In fact, 80% of the construction had been completed. The surveyor of the Respondent had given a wrong report and no Commissioner has been appointed by the fora below to verify the actual position.

Learned counsel for the Respondent, on the other hand, denied the above facts and reiterated the submissions made before the District Forum and State Commission based on which it had been concluded that the loan was not disbursed because of lack of progress in the construction of the building. This stand was also in conformity with the terms and conditions on the basis of which loan was sanctioned.

4. WE have considered the averments of the learned counsel and have carefully gone through the case file.

Condition No.5 of the terms and conditions on the basis of which the loan was sanctioned inter alia states as follows:

"Depending upon the progress of the construction of the property as also the requirement and regardless of any agreement that may have been prevailing between you and the builder, IDBI Home Finance Ltd. shall at its sole discretion, disburse the loan in one payment for the entire loan or in installments (which may normally not exceed six)".

In the instant case, according to the Surveyor"s report, construction on 4th floor had not been started and this fact had been admitted by the Petitioners before the fora below. In fact, Petitioners had contended that the work had stopped because of non-disbursement of loan and hence their repeated requests to Respondent to disburse the loan. No credible evidence by the Petitioners to the contrary or in support of their contention that 80% of the construction work was completed, has been produced.

5. ON the other hand, learned counsel for Respondent had made a statement both before the District Forum and the State Commission that Respondent would still be ready to disburse the loan depending upon the progress of construction.

6. IN view of the above facts and the clear stipulations of Condition No.5 of the terms and conditions, we find no reason to disagree with the findings of the learned fora below

which are accepted. The revision petition is dismissed.