

Akshay Gupta vs Icici Bank Limited on 25 March, 2025

Author: Vikram Nath

Bench: Sanjay Karol, Vikram Nath

2025 INSC 391

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1708 OF 2023

AKSHAY GUPTA & ORS.

...APPELLANTS

VERSUS

ICICI BANK LIMITED & ORS.

...RESPONDENT

WITH

CIVIL APPEAL NO.1709 OF 2023

AND

CIVIL APPEAL NO.2828 OF 2023

AND

CIVIL APPEAL NO.4336 OF 2023

JUDGMENT

VIKRAM NATH, J.

1. This is a classic case where wisdom dawned upon the three parties in a commercial arrangement to settle the dispute amicably, of course, with a little effort by the Court. The three parties, being the borrower/flat owners, the builder and the Bank – the lender. Under the agreement between the parties, there were respective obligations on each of the parties to be fulfilled, in which there were defaults at the end of each of the parties to some extent. The present appeals have been preferred under section 23 of the Consumer Protection Act, 1986 against the common judgment and order dated 02.01.2023 passed by the National Consumer Dispute Redressal Commission¹ rejecting the consumer complaints of the appellants (Flat buyers). The relief claimed in the complaints before the NCDRC was for quashing of the loan recall notice issued by the Bank alleging unfair trade practices

and violation of Reserve Bank of India² guidelines.

2. We need not mention detailed facts as the same have been appropriately recorded in two orders of this Court dated 23.10.2024 and 06.11.2024. In the order dated 23.10.2024, broadly, the settlement had been arrived at, however, instructions were to be taken on certain issues, for which time was granted. Finally, in NCDRC RBI the order dated 06.11.2024 all the terms of the settlement with respect to all the four appeals had been recorded. Both the orders as such are reproduced hereunder: -

“O R D E R (DATED:23.10.2024)

1. Learned senior counsel appearing for the ICICI Bank Ltd. (for short, ‘the Bank’) has submitted a chart showing the outstanding amount payable by the appellants as on 16.10.2024. The details of which are as under:

Case No.	Outstanding Charges	Total Interest Receivable	Outstanding PEMI (INR)	Total Principal (INR) including
As on 16.10.2024	CA 1,26,35,131.00	57,09,527.00	29,71,443.33	2,13,16,101.33
1708/2023	Akshay & Anr. vs. ICICI Bank Ltd. & Ors.			

CA 1,85,38,453.00	71,79,478.00	31,44,604.73	2,88,62,535.73	4336/2023	Muringassril Jacob Kuruvilla & Anr. vs. ICICI Bank Ltd. & Ors
CA 1,66,55,259.00	64,68,114.00	27,47,829.65	2,58,71,202.65	2828/2023	Jignesh Tapiawala & Anr. vs. ICICI Bank Ltd. & Ors.

2. Insofar as the appellants in three appeals mentioned in the table are concerned, the appellants have agreed to settle the outstanding principal amount upfront subject to certain adjustments under which they would be entitled to benefits from the Bank as also the Builder - Rajsanket Realty Ltd. (for short, ‘the Builder’).

3. Mr. Ritin Rai, learned senior counsel appearing for the Bank, upon instructions, submits that the Bank would completely waive the outstanding charges and will give a discount of 30% on the pre-EMI provided the entire outstanding principal amount is settled upfront and the remaining pre-EMI amount is also paid within any reasonable time granted by this Court.

4. Learned counsel for the appellants submitted that the 30% discount, which the Bank has extended on the pre-EMI amount, should be credited to the benefit of the appellants and as the Builder has agreed to pay 50% of the pre-EMI amount, the same would be paid by the Builder either to the appellants and thereafter the appellants may transfer it to the Bank or the Builder may directly deposit with the Bank subject to directions being issued to the Bank to accept the same from the Builder in the loan account of the appellants.

5. A further request has been made by the learned counsel appearing for the appellants in Civil Appeal Nos. 2828 of 2024 and 4336 of 2023 that the appellants have paid certain amount towards pre-EMI, after the Builder defaulted in making the said payments, and as such the 5% outstanding

amount, which they have to pay to the Builder towards club charges and other balance consideration, the same may be waived or the Builder may be asked to pay the said amount under the head of pre-EMI, which the appellants have paid to the Bank.

6. Learned counsel for the Builder upon instructions has agreed to pay 50% of the outstanding pre-EMI. It is further directed that the learned counsel appearing for the Builder may obtain instructions as to whether the Builder would prefer to waive the 5% outstanding sale consideration or get the amount of pre-EMI paid by the appellants to the Bank adjusted against the said 5% balance sale consideration.

7. In Civil Appeal 1709 of 2023, it is stated that the appellants have already settled the matter with the Bank and as the Bank has already received its entire settlement amount, it would issue NOC upon closure of the present pending appeal.

8. Two issues which survive in Civil Appeal No.1709 of 2023 is between the Builder and the appellants. As, according to the learned counsel for the appellants, the appellants have also paid certain amount towards pre- EMI against the default of the Builder, and have also paid the outstanding pre-EMI on the date of the settlement after receiving 30% discount from the Bank, and would like an adjustment and/or paid by the Builder of both the amounts of pre-EMI against the balance 5% sale consideration to be paid to the Builder. On this aspect also, learned counsel appearing for the Builder, shall obtain instructions.

9. Learned counsel appearing for the appellants will provide the details to the Builder about the pre-EMI amount paid by the appellants to the Bank, within a week from today, so that the Builder may obtain instructions on the same.

10. Whatever be the outcome of 5% sale consideration and the additional pre-EMI paid by the appellants, the same will not come in the way of the closure of these appeals and the decision of this Court will be final and binding on the parties.

11. In the meantime, the appellants will continue with the process and start making the payment to the Bank towards the outstanding principal amount as also the outstanding pre-EMI amount, which the Bank, after calculating the interest upto 15.11.2024 and 30.11.2024, intimate to the respective parties within a week from today.

12. List these matters on 06.11.2024 for consideration of-

(i) whether the amounts have been duly communicated or not;

(ii) clarification on the issue of 5% additional pre-EMI payment between the appellants and the builder and payment of pre-EMI of the defaulted amount and the outstanding amount.

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ORDER
(DATED 06.11.2024)

1. A detailed order was passed on 23rd October, 2024 granting time to the parties to provide necessary details and also obtain instructions.

2. Today, ICICI the Bank has produced the chart of the outstanding amount with respect to Civil Appeal Nos. 1708 of 2023, 4336 of 2023 and 2828 of 2023. The said chart gives the details of the outstanding amount of the principal and also the preEMI to be paid by the Builder as also the borrower. The interest calculated is up to 30th November, 2024. The said chart is reproduced hereunder :

Chart showing the outstanding amount payable by the Appellants as on 30.11.2024
Case No. Total Outstanding Interest 70% 50% Balance Total Total Outstanding including Interest amount to amount Amount Receivable including (INR) Principal PEMI including be borne by of the payable (INR) As on to be paid (INR) PEMI the Builder interest by the 30.11.2024 by the (INR) as per including Appella (Principal + Appellant (After Supreme g PEMI nt (INR) 70% PEMI) s (INR) 30% Court order to be Waiver) dated paid by 23.10.2024 the Appellants Civil 2,15,72, 1,26,35,1 59,26,31 41,48,42 29,63,159 11,85,26 1,38,20 1,67,83,55 Appeal 585.17 31.00 8 .00 2 .60 .00 3. 60 ,394.6 0 3 .60 1708/20 Akshay Gupta vs ICICI Bank Limited Civil 2,92,16, 1,85,38,4 74,83,52 52,38,46 37,41,762 14,96,70 2,00,35 2,37,76,91 Appeal 435.55 53.00 4 .00 6 .80 .00 4. 80 ,157.8 9 .80 4336/20 Muringa ssril Jacob Kuruvil la vs ICICI Bank Limited Civil 2,61,89, 1,66,55,2 67,41,49 47,19,04 33,70,748. 13,48,29 40 2,13,74,30 Appeal 495.27 59.00 7 .00 7 .90 50 9. 40 1,80,03 6 .90 2828/20 ,558.4 0 Jignesh Tapiawa la Vs ICICI Bank Limited

3. Learned counsel appearing for the Builder Shri Viraj Kadam, upon instructions, has stated that the Builder will pay the outstanding amount of pre-EMI, as mentioned in the above chart, latest by 20th December, 2024. Further, the learned counsel for the borrowers-appellants in the above three appeals, upon instruction, have stated that they will pay the outstanding amount payable by them, as indicated in the above chart, to the respondent-Bank within a week from the date the Builder makes the deposit with the Bank, as indicated above.

4. Learned counsel for the Bank has submitted that as the interest is calculated up to 30th November, 2024, the parties may be directed to make the deposit accordingly on or before the said date or otherwise, the Bank may submit a fresh Chart with interest calculated up to 31st December, 2024.

5. We are not inclined to accept the request of the Bank considering the fact that the Builder as also the borrowers-appellants have agreed to clear the entire outstanding amount, as agreed, including the principal amount. We direct that the Bank would be entitled to interest up to 30th November, 2024. In case, the Builder or the borrowers-appellants commit default in not making the payments, as noted above, the request of the Bank for interest beyond 30th November, 2024 would be considered.

6. Insofar as the adjustment of the pre-EMI paid by the borrowers-appellants to the respondent-

Bank, as against the 5% outstanding amount, to be paid by the borrowers-appellants to the Builder is concerned, Shri Viraj Kadam, learned counsel for the Builder has stated that the Builder will repay the pre-EMI, paid by the borrowers-appellants to the respective borrowers-appellants, within the same time i.e. before 20th December, 2024 and the borrowers- appellants may pay the balance 5% of the sale consideration to the Builder within a week thereafter, as indicated above.

7. Insofar as the appeal of Ravi Agrawal in Civil Appeal No. 1709 of 2023 is concerned, which does not involve the Bank but only settlement is to be arrived at between the Builder and the borrower(s)- appellant(s), according to Shri Viraj Kadam learned counsel appearing for the builder has agreed to pay the 50% of the pre-EMI outstanding amount, which the borrower(s)- appellant(s), had paid directly to the Bank within the same time i.e. before 20th December 2024. Shri Kadam, learned counsel further submits that the additional pre-EMI amount prior to the settlement with the Bank paid by the borrower(s)- appellant(s) will also be paid to the borrower(s)- appellant(s) by the Builder within the same time whereupon within a week thereafter, the borrower(s)- appellant(s) may pay the 5% balance of the sale consideration to the Builder. Learned counsel for the borrower(s)- appellant(s) agrees to the said terms and states that after receiving the additional pre-EMI amount as also the 50% of the outstanding pre- EMI amount, the borrower(s)-appellant(s) shall pay the balance 5% of the sale consideration to the Builder within a week.

8. Let the parties comply with the aforesaid terms and conditions and ensure that the timeline is maintained regarding the payment.

9. It is also directed that the Bank, upon receiving the entire amount, shall issue the NOC to the Borrowers-appellants forthwith in all the four cases.

10. List these appeals on 8th January, 2025.”

3. When the matter was taken up on 09.01.2025, learned counsel for the parties had informed us that all the directions contained in order dated 06.11.2024 have been complied with by the parties. Accordingly, two weeks' time was granted to the appellants to file the relevant documents relating to proof of deposits and the No Dues Certificate to be issued by the Bank to enable the Court to pass the final orders and conclude the proceedings. All the four appellants filed their affidavits before 23.01.2025 when orders were reserved.

4. We have perused the affidavits and we find that full compliance of the terms and conditions undertaken by the three parties has been done satisfactorily. The Bank had extended the discounts, the builder had discharged its obligations of payment of its share of pre-EMI and the borrowers had discharged their obligations by making the deposits with the Bank of the outstanding amount and also paying to the builder the 5% of the sale consideration which was outstanding.

5. We need not go into the details as the same is an admitted position. The Bank has also issued certificate stating that nothing further remains. The Bank has no further claim or right whatsoever against the appellants with respect to the facilities provided for the respective apartments.

6. Only three small issues have been flagged by the appellants, which need further clarification from this Court:

i) The Bank be directed to remove the word 'settlement' used in the loan account statement as it may affect future loan facilities being availed by the appellant. As such, the Bank be requested to delete the word 'settlement' and substitute it by the word 're-paid'.

ii) The apartments purchased by the appellants are ready and some minor work remains which the builder may complete forthwith and hand over possession to the appellants. It is also submitted that builder has already handed over possession in the said building to many other flat-owners.

iii) Another small issue raised is that the builder has not issued acknowledgment of the payments made by the appellants pursuant to the order dated 06.11.2024.

7. Considering the facts and circumstances of the case and the fact that upfront payment has been made by the borrower/appellants under orders of this Court, we are of the view that the loan account should be closed treating it as repaid or fully paid up. Mr. Viraj Kadam, learned counsel appearing for the builder, upon instruction, stated that the possession would be handed over on or before 31.03.2025. This takes care of the second issue raised. The third issue raised is only formal.

8. Accordingly, the following directions are issued: -

i) The Bank will accordingly make the necessary incorporations in their records, as noted above.

ii) As stated by Mr. Kadam, learned counsel for the builder, let possession of the apartments, fully completed in all respects as required under law, be handed over to the appellants on or before 31.03.2025.

iii) With respect to the third issue, the amount having been paid by the appellants to the builder by way of Bank transfer, even if no receipt is issued, the proof of payment is certified by the Bank, but still, the builder is directed to issue acknowledgment in writing to have received the entire due

amount.

iv) One last thing which remains is that the Bank, which had initiated recovery proceedings before the Debt Recovery Tribunal or before any other Forum with respect to the loan in question of the four appellants, shall forthwith withdraw the same, in view of the loan having been satisfied in all the four cases.

v) Further, appellant Ravi Agrawal or any other appellant who had initiated proceedings before the Real Estate Regulatory Authority shall withdraw such cases.

9. Thus, all matters between the parties stand closed and there shall be complete quietus to the litigation. The appeals stand disposed of accordingly.

.....J. [VIKRAM NATH]J. [SANJAY KAROL] NEW
DELHI MARCH 25, 2025