

Date of Complaint Filed:28.07.2021

Date of Reservation :06.07.2023

Date of Order :19.07.2023

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,

CHENNAI (SOUTH), CHENNAI-3.

PRESENT: TMT. B. JIJAA, M.L.,

: PRESIDENT

THIRU. T.R. SIVAKUMHAR, B.A., B.L.,

: MEMBER I

CONSUMER COMPLAINT No.94/2021

WEDNESDAY, THE 19th DAY OF JULY 2023

A. Rajagopalan (aged about 46),

S/o A.S.Aravamuthan,

53/36 Raju Street,

West Mambalam,

Chennai 600033.

..Complainant.

-Vs-

1.The Manager/Authorized Person,

IDFC FIRST Bank,

One India Bulls Center,

Tower 2A & 2B, 10thFloor,

Senapati Bapat Marg, Lower Parel (West),

Mumbai 400013.

2.The Manager/Authorized Person,

IDFC FIRST Bank,

Amarasri Buildings, 3rdFloor No.455,

Anna Salai,

Teynampet,

Chennai 600018.

..Opposite Parties.

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Counsel for the Complainant : M/s. C. Raja

Counsel for Opposite Parties : M/s. T K M Sai Krishnan

On perusal of records and upon hearing the oral arguments of the counsel for Complainant and the counsel for the Opposite Parties this Commission delivered the following:

ORDER

Pronounced by the President Tmt. B. Jijaa, M.L.,

(i) The Complainant has filed this complaint as against the Opposite Parties under section 35 of the Consumer Protection Act, 2019 and prays compensation of a sum of Rs.3,54,600/- for the reckless and neglect act of the Opposite Parties which made for the Complainant to suffer mentally and physically in the period of lockdown along with cost of this complaint.

I. The averments of Complaint in brief are as follows:-

1. The Complainant had entered in to a registered loan agreement by hypothecating his car bearing Registration No.TH-09-CC-0717 to the 2nd Opposite Party for loan of Rs.7,29,088/-. In pursuance of this loan agreement he signed the ECS (Electronic Clearing Service) for the loan EMI (Equated Monthly Installment) of Rs.17,730/- for a period of the 60 months. The ECS will be debited from his Savings Account No.611702010003726 in Union Bank of India, West Mambalam Branch, Chennai-600033. This ECS will be debited from his account on 2nd day of every succeeding month starting from 2nd day of January 2019.

2. The Complainant submitted that the first installment was paid by him on 2nd January 2019, thereon he is paying the installment regularly on every 2nd day of every succeeding month until March 2020, without any default.

3. The Complainant submitted that on 23rd March lock down was announced by the Union Government and the State Government, due to pandemic of the disease corona virus Covid- 19. Because of the lockdown the Union Government announced moratorium period for repayment of loan installment from 01.03.2020 to 31.08.2020. Due to moratorium the Opposite Party had not presented the EMI in the Complainant's account in Union Bank of India, West Mambalam branch for clearance on the regular EMI date of 2nd day of succeeding months in the period of moratorium from 02.04.2020 to 02.09.2020.
4. The Complainant submitted that on 19.06.2020 the Opposite Party presented ECS for Rs.8,865/- two times in the same day which amounts to Rs.17,730/- and this amount was cleared by the Complainant's bank from his account.
5. The Complainant submitted that this transaction took place in the period of moratorium and that too at the time when the State Government announced a total lock down from 19.06.2020 to 30.06.2020 and the State Government also declare that the lockdown includes the non functioning of bank and no transaction should be done.
6. The Complainant submitted that the day in which the ECS was presented by the Opposite Party is on 19.06.2020. It was the day the State Government had announced a total lock down from 19.06.2020 to 30.06.2020. The total lockdown includes the banks, all the banks in Tamil Nadu State were also not allowed to function. On 19.06.2020 the Complainant had Rs.19,915/-. Out of this amount the Opposite Party had withdrawn through ECS a sum of Rs.17,730/- by two times as Rs.8,865/- leaving just Rs.2,185/-. This withdrawal of ECS was done by the Opposite Party without any prior notice to the Complainant. Because of the unexpected withdrawal of ECS made, the Complainant was shocked and he felt that he was in a dark, and was worried that how he could manage the total lockdown period from 19.06.2020 to 30.06.2020 with the mere amount of Rs.2,185/-.
7. The Complainant submitted that he sent a notice to the Opposite Party's Chennai office through registered post on 20.06.2020. The Opposite Party did not give any reply to the Complainant's notice. Since no reply was given by the Opposite Party, the Complainant again sent another notice through registered post on 28.07.2020, even for this notice also no reply was given by the Opposite Party.
8. The Complainant submitted that on 02.10.2020 the ECS amount of Rs.17,730/- was presented by the Opposite Party after the moratorium period was over, the ECS was cleared by the Complainant. On 17.10.2020 the Complainant was having a balance of Rs.18,126/-. On 17.10.2020 the Opposite Party withdrew one more EMI from the Complainant's account in Union Bank of India, West Mambalam Branch a sum of Rs.17,730/- through ECS in the same month without any proper notification. This time the balance amount after the withdrawal of EMI on 17.10.2020 was just Rs. 396/-. With this pitty amount of balance the Complainant and his family were survived for the rest of the month of October 2020. The Complainant was forced to borrow money from a financier for a huge interest for the survival of his family for the rest of the month. The inhumanity behavior of the Opposite Party put the Complainant in heavy trouble mentally and physically.
9. The Complainant had sent notices on 20.06.2020 and on 28.07.2020, no reply was given by the Opposite Party. Then on 20.10.2020 a legal notice was sent through the Complainant's counsel to the Opposite Party having offices in Mumbai and Chennai. Even for the legal notice the Opposite Party did not make any reply and not came forward to redress the Complainant's genuine grievances. Hence the complaint.

II. Written Version filed by the Opposite Parties in brief is as follows:-

10. The Complainant had availed Car Loan but wrongly mentioned the disbursement amount as Rs.7,29,088/- instead of Rs.7,61,297/-. The Opposite Parties admit the fact that there was no outstanding dues from the Complainant till March 2020 towards the Car Loan Account.

11. The Opposite Parties submit that, the Reserve Bank of India had issued a circular dated 27.03.2020 to grant a moratorium period of three months on payment of all installments falling between 01.03.2020 and 31.05.2020. In the present case the scheduled payment of the EMI was collected in accordance with the terms and conditions of the loan agreement on 02.03.2020 i.e, even before the circular of the Reserve Bank of India. It is pertinent to note that, the Complainant neither communicated any letters in writing nor contacted the customer care service of the Opposite Parties bank for availing the moratorium in the said loan. Unless and until the Complainant gives any instructions to the Opposite Parties bank, the bank cannot take suo-motto decision to apply moratorium for the said loan without committing any default by the Complainant. In such event, it is absolutely not correct on the part of the Complainant to make a bald allegation that, the Opposite Parties bank had presented the EMI during the moratorium period. On careful perusal of the Statement of accounts it is clearly evident that, the Complainant bounced the EMI for the month of April 2020 and it was when, the Opposite Parties bank suo-motto on discretionary powers, applied the moratorium in the loan account of the Complainant for the period April 2020 and May 2020. It is pertinent to note that, no cheque bounce charges are added to the said period of April 2020 and May 2020. Further, the Complainant neither communicated any letters nor contacted the customer care services of the Opposite Parties bank with respect to the moratorium. Therefore it is clearly evident that, the Opposite Parties bank with a good gesture had granted moratorium for the month of April 2020 and May 2020 even without Complainant's consent.

12. The Opposite Parties submitted that, the Reserve Bank of India had issued another circular dated 23.05.2020 permitting the bank and financial institutions to extend the moratorium by another three months from 01.06.2020 to 31.08.2020. As mentioned earlier the moratorium will be provided to the customers who have given a written consent for availing moratorium, but in the present case the Complainant neither communicated any letters in writing nor contacted the customer care services of the Opposite Parties bank for availing the benefit of moratorium. Since no such communication as stated above had come from the Complainant the Opposite Parties bank presented the EMI in accordance with the terms and conditions of the loan agreement on 02.06.2020, but the same was returned for the reason "Insufficient Funds". In the normal banking practice, when the EMI is bounced, the bank will re-present the EMI on the same month for a second time, similarly in the present case the EMI was re-presented and the same was cleared on 19.06.2020. But the Complainant had filed two notices dated 19.06.2020 & 28.07.2020 which notices are not properly addressed to the Opposite Parties bank and the same has been received by IDFC Asset Management Company Limited, Teynampet which is completely a different legal entity and therefore the said notices had not been received by the Opposite Parties bank.

13. The Opposite Parties bank submitted that, subsequent to the above mentioned circulars of Reserve Bank of India no other circulars are issued by the Reserve Bank of India with respect to the moratorium period for the loans. Therefore the Complainant is liable to pay interest for the EMI amount for the period from May 2020 to August 2020 and cheque bounce charges from the period September 2020. For the legal notice dated 22.03.2021 issued by the Complainant the Opposite Parties bank had replied vide

notice dated 01.07.2021.

14. The Opposite Party bank submitted that as on 29.09.2021 the Complainant is thus liable to pay a total outstanding amount of Rs. 5,21,204.28p inclusive of all charges which is legitimately due to the Opposite Parties bank.

15. Further submitted that under Sec 39 of the Consumer Protection Act, 2019 the term compensation means equivalence and the award of compensation by the commission has to be based on well recognized principles governing the quantification of loss or injury suffered to assess compensation and not arbitrarily and also it has to be established whether the loss alleged was direct result of negligence or whether it is remote. In the absence of such proof the claim cannot be sustained and has to be rejected totally. Hence prayed to dismiss the complaint.

III. The Complainant has filed his proof affidavit, in support of his claim in the complaint and has filed 8 documents which are marked as Ex.A-1 to A-8. The Opposite Parties had submitted their proof affidavit. On the side of Opposite Parties documents were marked as Ex.B-1 to Ex.B-6. Written arguments of Complainant and Opposite Parties was filed.

V. Points for Consideration:-

1. Whether there is any deficiency in service on the part of the Opposite Parties?

2. Whether the Complainant is entitled for the reliefs sought for?

3.. To what other relief, the Complainant is entitled to?

POINT NO. 1 :-

16. The admitted facts are that the Complainant had availed Car Loan from the Opposite Parties for a sum of Rs.7,29,088/- however the Opposite Parties contend that it was wrongly mentioned as Rs.7,29,088/- instead of Rs.7,61,297/-. It was also admitted that the Complainant had agreed to repay the loan in EMI of Rs.17,730/- through ECS for 60 months and that he was regular in payment of due till March 2020. The dispute arose when the Opposite Parties deducted the EMI of the Complainant during the moratorium period.

17. The Complainant contended that the Government had announced lock down on 23.03.2020. Due to pandemic the Union Government had announced moratorium for the repayment of loan instalments from 01.01.2020 to 31.08.2020. The Complainant submitted that on 19.06.2020 the Opposite Party presented ECS for Rs. 8805/-two times in the same day which amounts to Rs. 17,730/- and this amount was cleared by the Complainant's bank from his account leaving just Rs.2185/-. The transaction took place in the period of moratorium and that too at the time when the State Government announced a total lock down from 19.06.2020 to 30.06.2020 and the State Government also declared that the lockdown includes the

non functioning of bank and no transaction should be done. This withdrawal of ECS was done by the Opposite Party without any prior notice to the Complainant. Because of the unexpected withdrawal of ECS made the Complainant a sudden shock and he felt that he was in a dark, and was worried that how he could manage the total lockdown period from 19.06.2020 to 30.06.2020. It made the Complainant very difficult for survival of himself and his family with the mere amount of Rs.2185/-. The Complainant had sent a notice to the Opposite Party's Chennai office through register post on 20.06.2020, Ex.A-5. As there was no reply from the Opposite Party, the Complainant again sent another notice through register post on 28.07.2020, Ex.A-6, even for which notice no reply was given by the Opposite Party.

18. Further the Complainant contended that on 02.10.2020 the ECS amount of Rs.17,730/- was presented by the Opposite Party after the moratorium period was over, the ECS was cleared by the Complainant. Again on 17.10.2020 the Opposite Party had withdrawn one more EMI

from the Complainant's account for a sum of Rs.17,730/- through ECS in the same month without any proper notification leaving a pittance of Rs.396/-.

19. The Opposite Parties confirmed that there is no outstanding dues from the Complainant till March 2020 towards the Car Loan Account. Further contended that the Reserve Bank of India had issued a circular dated 27.03.2020 to grant a moratorium period of three months on payment of all installments falling between 01.03.2020 and 31.05.2020. In the present case the schedule payment of the EMI was collected in accordance with the terms and conditions of the loan agreement on 02.03.2020 i.e, even before the circular of the Reserve Bank of India. Further contended that, the Complainant had not availed moratorium in the said loan and the bank cannot take suo-moto decision to apply moratorium for the said loan. The Opposite Parties submitted that, the Reserve Bank of India had issued another circular dated 23.05.2020 permitting the bank and financial institutions to extend the moratorium by another three months from 01.06.2020 to 31.08.2020. The Complainant neither communicated any letters in writing nor contacted the customer care services of the Opposite Parties bank for availing the benefit of moratorium, hence Opposite Parties bank presented the EMI in accordance with the terms and conditions of the loan agreement on 02.06.2020, but the same was returned for the reason "Insufficient Funds" and the same was re-presented and the same was cleared on 19.06.2020. The Opposite Parties would like to emphasis on the point that, the Complainant had neither written any letters in writing nor communicated to the customer care services of the Opposite Parties for availing the moratorium. But the Complainant had filed two notices dated 19.06.2020 & 28.07.2020 which was not properly addressed to the Opposite Parties. The Opposite Party bank submitted that a sum of Rs.3,74,887.19p is the total outstanding due to the Opposite Parties as on 24.08.2022.

20. The Opposite Parties having admitted that they suo moto applied the moratorium in the loan account of the Complainant for the period from April 2020 to May 2020 and inspite of the circular dated 23.05.2020 of the Reserve Bank of India to extend the moratorium for another three months from 01.06.2020 to 31.08.2020 had presented the ECS for the month of June 2020 in 2 instalments of Rs.8865/- amounting to Rs.17,730/- and had collected the due for the month of June 2020. The Opposite Parties on one hand claim that they suo moto applied for moratorium period for the months of April and May 2020 but had presented the cheques for the month of June 2020 when the moratorium period was in force till August 2020. When the EMI amount is Rs.17,730/- which is to be cleared by ECS, the Opposite Parties had deposited for ECS clearance of Rs.8865/- twice on 19.06.2020. The reason for manipulating the cheque amounts is also not known. Either the Opposite Parties should have taken a stand that the Complainant had not opted for Moratorium and hence realised the EMIs or suo moto applied for the whole moratorium period. Further the Opposite Parties are silent about the 2 transactions made in the

October 2020.

21. The Opposite Parties having admitted that the Complainant was prompt in repayment of loan till March 2020 and the act of the Opposite Parties in realizing the EMI for the month of June 2020 during the moratorium period when the Opposite Party had already applied the moratorium for the previous 2 months of April 2020 and May 2020 and deducting 2 instalments in the month of October 2020 when there was lock down and the earning capacity was very low leaving the Complainant to suffer financially due to the act of the Opposite Parties without any intimation to the complainant and without considering the moratorium period that was in force until 31.08.2020 amounts to deficiency in service. Accordingly, Point No.1 is answered.

POINTS NO 2 & 3:

22. As discussed and decided Point No.1 in favour of the Complainant, the 1st and 2nd Opposite Parties are liable to pay compensation of Rs.50,000/- for the deficiency in service and mental agony caused to the Complainant and a sum of Rs.5,000/- towards the cost of litigation. The Complainant is not entitled for any other reliefs. Accordingly the points are answered.

In the result, the complaint is allowed in part. The 1st and 2nd Opposite Parties are directed jointly and severally to pay compensation of Rs.50,000/- (Rupees Fifty Thousand Only) for the deficiency in service and mental agony caused to the Complainant and a sum of Rs.5,000/- (Rupees Five Thousand Only) towards cost of the litigation, within 8 weeks from the date of receipt of this order, failing which the above amount of Rs.50,000/- shall carry interest at the rate of 9% from the date of receipt of this order till the date of realisation.

Dictated to Steno-Typist, transcribed and typed by her, corrected and pronounced by us in the Open Commission, on 19th of July 2023.

T.R. SIVAKUMHAR

MEMBER I

B.JIJAA

PRESIDENT

List of documents filed on the side of the Complainant:-

Ex.A1	13.01.2016	R.C. Book Xerox
Ex.A2	28.12.2018	Loan Repayment schedule sent by the Opposite Party
Ex.A3	10.01.2020	Insurance copy-xerox
Ex.A4	01.03.2020	Bank Statement of the Complainant from 01.03.2020 to 31.10.2020
Ex.A5	19.06.2020	Notice sent to Opposite Party's Chennai office on 19.06.2020
Ex.A6	28.07.2020	Notice sent to Opposite Party's Chennai office on 28.07.2020

Ex.A7	20.10.2020	Legal Notice sent to the Opposite Party's Mumbai office and Chennai office with Acknowledgement card
Ex.A8		Aadhar Card copy of the Complainant

List of documents filed on the side of the Opposite Parties:-

Ex.B1		Loan Application Form and Loan Agreement
Ex.B2	24.08.2022	Statement of Accounts
Ex.B3	27.03.2020	RBI Circular
Ex.B4	23.05.2020	RBI Circular
Ex.B5	22.03.2021	Legal notice issued by the Complainant
Ex.B6	01.07.2021	Reply notice issued by the Opposite Parties

T.R. SIVAKUMHAR

MEMBER I

B.JIJAA

PRESIDENT