

RESERVED

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW**

APPEAL NO. 410 OF 2007

(Against the judgment/order dated 22-12-2006, 27-12-2006
and 01-02-2007 in Complaint Case No.149/2005 of the District
Consumer Forum-II, Lucknow)

Sri Ramesh Chandra Mathur

.....Appellant

Vs.

Smt. Sheela Devi and others

.....Respondents

APPEAL NO. 560 OF 2007

(Against the judgment/order dated 22-12-2006 and 01-02-2007
in Complaint Case No.148/2005 of the District Consumer
Forum-II, Lucknow)

Smt. Prabha Singh

.....Appellant

Vs.

Sri Manoj Tahalani and others

.....Respondents

APPEAL NO. 840 OF 2009

(Against the judgment/order dated 22-12-2006 and 01-02-2007
in Complaint Case No.148/2005 of the District Consumer
Forum-II, Lucknow)

Kasmanda Estates and others

.....Appellants

Vs.

Sri Manoj Tahalani and another

.....Respondents

APPEAL NO. 841 OF 2009

(Against the judgment/order dated 22-12-2006 and 01-02-2007
in Complaint Case No.149/2005 of the District Consumer
Forum-II, Lucknow)

Kasmanda Estates and others

.....Appellants

Vs.

Smt. Sheela Devi and another

.....Respondents

Bajaj

Q

B

:2:

AND

APPEAL NO. 489 OF 2007

(Against the judgment/order dated 22-12-2006, 27-12-2006
and 01-02-2007 in Complaint Case No.148/2005 of the
District Consumer Forum-II, Lucknow)

M/s. Consolidated Construction Company

.....Appellant

Vs.

Sri Manoj Tahalani and others

.....Respondents

BEFORE:

**HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT
HON'BLE MR. SYED ALI AZHAR RIZVI, MEMBER
HON'BLE MR. RAMPAL SINGH, MEMBER**




1. Sri Dipak Seth, learned Counsel for Sri Manoj Tahalani and Smt. Sheela Devi.
2. Sri Sanjeev Bahadur Srivastava, learned Counsel for Kasmand Estates
3. Sri Altaf Mansoor, learned Counsel for Consolidated Construction Company
4. Sri J P Mathur, learned Counsel for Sri Ramesh Chandra Mathur.
5. Sri Pratul Srivastava, learned Counsel for Smt. Prabha Singh
6. Sri Ashok Kumar Singh, learned Counsel in A/489/2007

Dated : 25.02.2011

JUDGMENT

PER MR. JUSTICE BHANWAR SINGH, PRESIDENT

All these appeals have been filed against one and the same judgment dated 22.12.2006 of the President, District Consumer Forum II, Lucknow and dated 1.2.2007 of the male Member and dated 27.12.2006 of the female Member. The male Member Dr K A Khan concurred with the judgment of the President Sri A K Agarwal and allowed both the complaints No 148/2005 filed by Sri Manoj Tahalani and the case No 149/2005 preferred by Smt Sheela Devi. Both the complainants were held to be entitled to get possession over the flats allotted to them by Consolidated Construction Company. Whereas two flats No 320 and 320-B of Kasmanda Estates. Kasmanda Regent Apartments, 2

Park Road, Hazratganj, Lucknow were allotted to Sri Manoj Tahalani, flat No 401 was allotted to the other complainant, Smt Sheela Devi. The Consolidated Construction Company was directed to complete all the flats and hand over their possession to the aforesaid allottees within thirty days from the date of judgment and also execute the sale deeds in accordance with the agreements. The District Consumer Forum had also directed that the Consolidated Construction Company was liable to pay interest on the amounts deposited by the two complainants at the rate of Rs 8% per annum. Litigation charges amounting to Rs.3,000/- each were also awarded to the complainants.

The application for impleadment moved by Smt. Prabha Singh and Sri Ramesh Chandra Mathur were rejected.

The Female Member Smt. Veena Arora delivered a separate judgment on 27.12.2006 thereby granting the application of Smt. Prabha Singh who was held to be the lawful allottee/owner of flat No 320-B of Kasmanda Regent Apartments. Smt. Prabha Singh was held, to be in lawful possession of the aforesaid flat and this finding was recorded on the basis of the Commissioner's report who had visited and inspected the aforesaid flat and found Smt. Prabha Singh in lawful possession thereof. On the basis of these findings flat No 320-B was released in favour of Smt. Prabha Singh.

However, the similar application of Smt. Reena Singh and Sri Ramesh Chandra Mathur in respect of flats No 401 & 320 were rejected. As regards the rights of Smt. Chandra Prabha Devi in respect of flats No.220 & 221, it was held that possession of these flats could be handed over as desired by her in accordance with the terms of the agreement dated 7.10.2002. Mrs. Arora also instructed the opposite parties to hand over possession of flat No 320 to Sri Manoj Tahalani and further directed that in place of flat No 321 which could not be constructed on account of the objections raised by the Fire Department, some other flats may be allotted to him. In the alternative the amounts deposited by Sri Manoj Tahalani in regard to flat No 321 might be repaid to him along-with interest at the rate of 12% per annum.

Beqth  

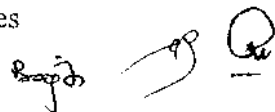
As mentioned earlier Sri Ramesh Chandra Mathur and Smt. Prabha Singh were aggrieved of the majority judgments of the President and Male Member and thus filed their respective appeals.

The Consolidated Construction Company was also not happy with the judgment as it had transferred valuable rights to Sri Ramesh Chandra Mathur and Smt. Prabha Singh.

Likewise, Kasmanda Estates also questioned the propriety of the judgment as directions were issued to the owners of the Estate, although they were not party to the agreements between the complainants or the other applicants, Sri Ramesh Chandra Mathur and Smt. Prabha Singh, and the Consolidated Construction Company. In this way being aggrieved of the impugned judgment, Kasmanda Estates filed the two appeals.

The facts giving rise to these appeals may in brief be narrated as under:-


Sri Manoj Tahalani filed his complaint No 248/2005 with the allegations that the opposite party No 3, Sri Divyakar Pratap Singh and opposite party No. 4 Smt. Chandra Prabha Devi were the owners of the property widely known as Kasmanda Estates, Kasmanda Regent Apartments, 2 Park Road, Lucknow. These opposite parties No 3 & 4 entered into a builders-agreement with the opposite party No 1, Consolidated Construction Company to construct a multi-storied building offering land of Kasmanda Estates after demolishing the old structure standing thereon. The agreement was reduced to writing and executed on 29.12.1994 and registered on 8.8.1995. In accordance with the terms and conditions of this agreement, Consolidated Construction Company (hereinafter referred to as "Construction Company") started construction of proposed multi-storied building known as "Kasmanda Regent Apartments" and Sri Peush Tandon, the Managing Director of the Construction Company was authorized by all the opposite parties as the "COLLECTING ATTORNEY". The complainant, Sri Manoj Tahalani living in the same complex on being motivated by Sri Peush Tandon proposed to purchase finished combined property bearing a total sale consideration of Rs 18,16,000/-. He paid on different dates



Rs.13,26,000/- and kept on chasing the opposite parties for early completion of his flat and execution of the sale deed. Stamp papers worth of Rs 73,300/- were also handed over to the opposite parties. However, the opposite parties refused to sanction and execute the agreement to sell and created an undue pressure on the complainant Sri Manoj Tahalani to enhance the sale consideration and pay an additional sum of Rs 3,36,000/-. Being under pressure he paid the said amount where-after an agreement for sale of flat No 220 & 221 was registered on 7.12.2002, however, with a condition that if Smt. Chandra Prabha Devi would continue to retain the said flat No 220 & 221 for her personal use, the complainant would take flat No 320 & 321 on the IIIrd floor of the said complex. Sri Peush Tandon deliberately did not show receipt of cash of Rs 5,40,000/- paid by the complainant Sri Manoj Tahalani in the agreement deed and subsequently started black-mailing and again demanded a sum of Rs 6,00,000 more before execution of the sale deed. The complainant Sri Manoj Tahalani also pleaded in his complaint that he came to know from reliable source that the opposite party in an illegal manner had negotiated with some other person for the sale of the said flat of the complainant at an astonishingly huge price for the sole purpose of making an illegal enrichment and it was in pursuance of this object that the opposite parties were carrying out construction activities with slow pace and in utter contravention of the basic plan. Under these circumstances Sri Manoj Tahalani filed his complaint for physical possession of either the combined flat No 220 & 221 or No 320 & 321 in front block of Kasmanda Estates along-with one garage.

Before we proceed further it may be noted that opposite party No 4, Smt. Chandra Prabha Devi, the co-owner of Kasmanda Estates is a different person than the appellant, Smt. Prabha Singh of appeal No 560/2007.

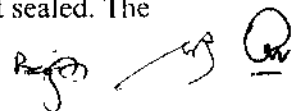
In her complaint No 149/2005 Smt. Sheela Devi pleaded that she entered into an agreement with Sri Peush Tandon to purchase flat No 401 of Kasmanda Regent Apartments for a sum of Rs 9,87,000/- and paid Rs 1,00,000/- by way of draft as an earnest money. Sri Peush Tandon

Beja 

agreed to allocate car parking space also along-with the flat.

Sri Ramesh Chandra Mathur, the appellant of Appeal No. 410/2007 pleaded that he purchased the Flat No.401 in Kasmanda Regent Apartments, Hazratganj in February,2004 and managing partner of the Consolidated Construction Company had inducted him into the possession of the said flat. The appellant invested huge amount in completing the incomplete flat with flooring and other interiors.

Earlier an agreement to sell was executed in respect of Flat No. 401 between Smt. Sheela Devi and the Consolidated Construction Company and it was agreed between them that the sale deed would be executed within one year from the date of agreement on payment of the balance of the agreed sum and if the vendor would commit any default Smt. Sheela Devi can get the sale deed executed through court. After the lapse of one year the company asked Smt. Sheela Devi to get the sale deed executed but she failed to come forward, as a consequence the company finally cancelled the allotment vide notice dated 15-12-2003 and it was after that in February, 2004 the appellant Mr. Mathur purchased it and entered into physical possession thereof in December, 2004. The appellant had also purchased the stamp papers of Rs.73,000/- for execution of the sale deed in his favour and the entire sale deed had been prepared and printed on the said stamp papers but due to pendency of a case in the civil court its registration was held up. In the Civil Suit No. 243/2004 filed by Smt. Sheela Devi the interim application moved by her was rejected with the observation that she had not filed a suit for specific performance rather simply prayed for an injunction. Smt. Sheela Devi then filed an another case before the District Consumer Forum-II, Lucknow on the same subject matter and deliberately omitted impleadment of the appellant but sought a relief against him. The District Consumer Forum issued a commission and the commissioner in his report submitted that the appellant was in possession of the Flat No. 401. In spite of the fact that Smt. Sheela also admitted in her affidavit about the appellant being in possession and carrying out the completion work, the Forum directed for attachment of the flat and got it sealed. The

The block contains several handwritten signatures and initials in black ink, located at the bottom right of the page. There are three distinct marks: a signature that appears to be 'Rajendra', a signature that appears to be 'Smt. Sheela Devi', and a circular stamp or initial.

District Consumer Forum despite these admitted facts and features rejected the appellant's application for impleadment. The appellant was prejudiced by the District Consumer Forum's order for keeping his application in abeyance and rejecting it eventually by means of the judgment in appeal. The appellant preferred a separate complaint No. 60/2006 and moved an application for connecting this complaint with Smt. Sheela Devi's complaint No. 149/2005 but again to his great prejudice the said complaint was neither connected, nor decided rather it was kept in abeyance.

As a matter of fact, the allotment in the name of Smt. Sheela Devi was cancelled after legal notice. The District Consumer Forum did not consider the plea of the appellant that Smt. Sheela Devi failed to obtain any relief from the civil court and the District Consumer Forum could not encroach upon the jurisdiction of the civil court by granting a relief which she could only get from the civil court but failed to do so. The appellant's complaint is still pending and in this way he was denied an opportunity of hearing – neither in his own case, nor in that of Smt. Sheela Devi. The District Consumer Forum failed to consider its own order dated 08-02-2006, the Commissioner's report and the affidavit of Smt. Sheela Devi – all leading to an unrebutted conclusion that the appellant was in actual and physical possession of the flat.

The District Consumer Forum comprising the President Sri A K Agrawal and member Dr. K. A. Khan despite protest of the appellant issued orders of attachment within 48 hours of their judgment and had not given a chance to the appellant to make his submission or prefer an appeal and obtain an order. In this way not only the impugned judgment and order but also the order of attachment were illegal and passed in an arbitrary manner. Therefore, these orders are liable to be set aside.

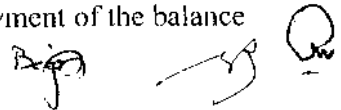
Ms. Prabha Singh pleaded in her Appeal No. 560/2007 that her application was wrongly rejected by the President on the ground that the order had already been passed in favour of Sri Manoj Tahalani. The female member, however, allowed her application but the male member agreed with the President. The District Consumer Forum in a hurried and unusual manner directed the S.S.P, Lucknow to execute the

By

impugned judgment immediately even without waiting for the appeal to be preferred. In other words the judgment which was finally passed on 01-02-2007 was executed on 02-02-2007 without waiting for the period of appeal. The appellant had by then invested a huge amount for completing construction of the Flat No.320/B and taking advantage of the favour extended to him Sri Manoj Tahalani succeeded in taking away the appellant's materials worth Rs.5,00,000/-. The appellant's application for impleadment was arbitrarily rejected by a non speaking order by the President and the male member. The District Consumer Forum did not consider the fact that a civil suit in respect of this flat was pending in the civil court and the proceedings before the District Consumer Forum were barred by the doctrine of resjudicata.

It was pleaded further by Smt. Prabha Singh that she had purchased Flat No.320/B in Kasmanda Regent Apartments, Hazratganj in February,2004 and paid the entire amount by taking a loan of Rs.20,00,000/- from the bank. In all, she paid to the builders Rs.27,40,000/-. The Consolidated Construction Company issued to her a letter of possession on 23-02-2004 and she then actually entered into physical possession of the said flat. Sri Manoj Tahalani got her flat no.320-B attached and sealed in execution of the impugned judgment. The District Consumer Forum in an arbitrary way got her flat sealed without appreciating the Commissioner's report dated 4/12/2005 wherein it was recited in unambiguous term that the appellant Smt. Prabha Singh was in possession of Flat No. 320-B. It was pleaded further that Sri Manoj Tahalani filed a civil suit in the Court of Civil Judge (Senior Division), Lucknow and prayed for a temporary injunction but his application was rejected and Sri Manoj Tahalani's appeal against the rejection order is still pending. Sri Manoj Tahalani deliberately avoided to implead the appellant as one of the opposite parties in his Complaint No. 148/2005 filed before the District Consumer Forum below. The Consolidated Construction Company supported the cause of the appellant before the District Consumer Forum and pleaded that allotment in respect of Flat No. 320-B was made after cancellation of the allotment in favour of Sri Manoj Tahalani who had failed to make payment of the balance



amount of the price agreed between the parties. Since Sri Manoj Tahalani was a defaulter in so far as Flat No.320-B was concerned and further since the appellant got possession of the said flat on payment of the entire price of Rs.27,40,000/-, the Consolidated Construction Company cannot be blamed for any deficiency in service and as such the impugned judgment is liable to be set aside.

The appellants of Appeal No. 840/2009 namely Kasmanda Estates and its proprietor Sri Divyakar Pratap Singh have also challenged the propriety of the judgment. By means of Appeal No. 840/2009 the judgment passed in complaint No.148/2005 has been challenged while the same judgment has been subjected to criticism by means of the other appeal no. 841/2009. Kasmanda Estates filed two appeals against the same judgment as there were two complaints – one filed by Sri Manoj Tahalani i.e. no. 148/2005 and the other filed by Smt. Sheela Devi and another i.e. Complaint No. 149/2005. Although the judgment being one, one appeal could have served the purpose of the appellants, yet if they have chosen to prefer two appeals it is all the more good. However, the plea of defence of the appellants against the two complainants named above is common and they may be stated hereinafter.

Before such pleas are revealed, it would be relevant to mention here that Smt. Chandra Prabha Devi shown as appellant no.3 was also the co-owner of the Kasmanda Estates but she died before the appeal could be filed and, therefore, she was formerly impleaded in the array of appellants through her son Sri Divyakar Pratap Singh the appellant no.2.

It was submitted on behalf of these appellants that they were the owners of the land and in their capacity as owners they entered into an agreement with Consolidated Construction Company whereby it was agreed that the construction company shall be liable for construction of the flats but the Kasmanda Estates would be the collection agent and the proceeds coming to them shall be jointly shared by them.

As regards the allotment of flats in the name of Sri Manoj Tahalani, the appellants pleaded that Sri Manoj Tahalani paid Rs.5,40,000/- but since he failed to pay the entire price of the flats he is

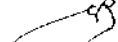
Beqrd



not entitled to claim any relief nor the alleged payment to Sri Peush Tandon by him by way of simple receipts can bind the appellants as such payments being not on the prescribed printed receipts might relate to any other transaction or may be a fraudulent act of Sri Peush Tandon to cause loss to the appellants. In other words an attempt was made to submit that the receipt of payment contrary to the agreement was meaningless and not binding upon Kasmanda Estates and its proprietor who were the party to the agreement for sale of the two flats. The alleged payment of Rs.7,86,000/- might be based on some unholy alliance between Sri Peush Tandon and Sri Manoj Tahalani and such illegal and unlawful alliance between the two should not be permitted to derive any advantage. As a matter of fact, Sri Manoj Tahalani failed to pay the balance amount of the agreed price and thus he himself committed a default and a defaulter cannot succeed on a cause which fails to prove a deficiency in service on the part of the owners/builders. These appellants also referred to the civil suit no.92/2004 filed before the Civil Judge (Senior Division), Lucknow and pleaded that the District Consumer Forum should not have adjudicated upon the consumer dispute unless the civil rights of the parties were finally decided. It was also stated by these appellants that the complaint of Sri Manoj Tahalani was barred by limitation as he filed his complaint in 2005 as against the registered agreement dated 31-07-2002.

Likewise the case of Smt. Sheela Devi was subjected to criticism and it was pleaded that Smt. Sheela Devi herself was a defaulter as she did not come forward to pay the balance of the price and get the sale deed executed within the stipulated time of one year and it was on account of her default that allotment in her name was cancelled. The civil suit she had filed had been withdrawn by her after her application for possession was rejected. She had not preferred to file a civil suit for specific performance perhaps because the whole transaction between her and Sri Peush Tandon was a sham transaction. Her complaint was also barred by time as she had not filed it within two years from the date of the registered agreement for sale.







The Appeal No. 489/2007 was filed by M/s. Consolidated Construction Company (Kasmanda Regent Apartments) a partnership firm through its managing partner Sri Peush Tandon. According to this partnership firm he had not been given a proper opportunity of hearing on account of a number of criminal and civil proceedings initiated against him by Sri Manoj Tahalani and his friends and also relatives.

The single member vide his order dated 02-02-2007 passed an illegal order by issuing a direction for attachment of the flat in question. Such an order was null and void as this order was not signed either by the President or the female member.

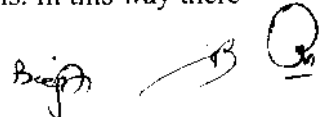
The impugned order of Dr. K A Khan has been further challenged by Sri Tandon on the ground that he had never attended the hearing of the case and as such he could not pass the order under Section 14(2A) of the Consumer Protection Act. As a matter of fact, his order of 02-02-2007 is nonest in the eyes of law. The District Consumer Forum could not have adjudicated upon the issue of ownership particularly when a civil suit between the parties was pending in the civil court of competent jurisdiction. Sri Manoj Tahalani the respondent no.1 was himself a defaulter as he was himself negligent in making payment as per the terms and conditions of the agreement to sell. The District Consumer Forum wrongly relied upon the false, fictitious and forged receipts on the basis of assumptions and conjectures, even though the receipt of money through these forged receipts not on prescribed and printed receipt of the firm was not referred to in the subsequently registered agreement to sell dated 31-07-2002.

In other words the appellant pleaded that the plea of payment pressed into service by Sri Manoj Tahalani prior to the agreement for sale could not be attached any significance unless receipt of such payment was admitted or recited in the said agreement. The District Consumer Forum travelled beyond its jurisdiction and the terms and conditions of the registered agreement. The payment of the price of any flat of the Kasmanda Estates could be made to the collection agent as per agreement to sell dated 31-07-2002. The judgment in appeal has further been criticized on the ground that the District Consumer Forum failed to



appreciate that the booking of the flats no. 320 and 321 was cancelled due to failure on the part of the respondent/complainant Sri Manoj Tahalani himself. As time was the essence of the contract between the parties and the complainant Sri Manoj Tahalani failed to pay the balance of the agreed price within one year the allotment in his name was cancelled. The Advocate Commissioner also submitted his report against Sri Manoj Tahalani and clearly indicated that the latter was never in possession of the two flats in question. It is on the basis of these pleas that the Consolidated Construction Company has filed this appeal with the prayer for setting aside the judgment.

Sri Dipak Seth, learned Counsel for the respondent Sri Manoj Tahalani has contended that the two appeals of Kasmanda Estates are barred by time and, therefore, should be dismissed on the ground of limitation alone. On the other hand, Sri Sanjeev Bahadur Srivastava, learned Counsel for the Kasmanda Estates submitted that no doubt the interest of Kasmanda Estates would have been very well protected by representing them in the other three appeals as they have been impleaded as respondents in those appeals but since their partner Sri Peush Tandon was in jail and he was not able to plead the cause of Kasmanda Estates properly, it was considered of greater significance that the impugned judgments are challenged by Kasmanda Estates also so that the real issues might be adjudicated upon. As a matter of fact, initially the proprietors of the Kasmand Estates were misguided and misdirected that their interest could be protected from their position of being respondents but as argued by Sri Sanjeev Bahadur Srivastava he advised the proprietors to effectively put-forth their version and challenge the claim of the complainants by filing their own appeals. Since the operation of the impugned judgment and orders were stayed in other appeals, the status-quo at the site of the flats continued and even by now neither any party has been prejudiced, nor with the efflux of time the Kasmanda Estates or Sri Peush Tandon has derived any advantage. The proprietor Sri Divyakar Pratap Singh also consulted some other lawyers in April, 2009 and all of them advised him to file his appeals. In this way there

Handwritten signatures and initials at the bottom right of the page, including a signature that appears to be 'Sri Divyakar Pratap Singh' and other initials.

was no deliberate or any intentional act causing delay in filing the appeals but as a matter of fact the wrong advise initially extended to the proprietors of not filing any appeal rather contest as respondents in the appeal of others was the main reason for delay in filing the two appeals. It is also important to note that all the other appeals were pending disposal before this Commission at the time of the two appeals of Kasmanda Estates being filed in 2009 and since, as observed earlier none had by then derived any gain nor suffered any prejudice, the two appeals in question can very well be disposed of on merit alongwith the three other appeals.

Accordingly we condone the delay in filing the said two appeals.

Sri Altaf Mansoor representing Consolidated Construction Company cited a decision of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. V/s Munimahesh Patel (2006) 7 Supreme Court Cases 655 and contended with reference to the said verdict that a Consumer Forum should not adjudicate the issues involving disputed factual questions. In this context, it may be observed that the case before us is not of the kind which cannot be adjudicated upon. In the above mentioned decision the insured party had made a mis-declaration in the proposal form that she was a teacher and the complainant in turn disputed the genuineness of the proposal form produced by the insurer. As a matter of fact, this question was bypassed by the Hon'ble National Commission and it was in that context that the complainant was advised to seek relief in an appropriate court. As a matter of fact, the insurer of that case produced documents to show that the proposal form contained a false declaration that the insured was a teacher and another documents showed otherwise. In this way a dispute about the genuineness of the documents subsisted in that case but in the present appeals before us there is no such question of fact to be determined by us. A case of false declaration is something different as compared to execution of the receipts of payment. We shall discuss hereinafter at the appropriate place about the genuineness of some receipts of payment but the question is not exactly similar to that of a declaration. The issue pertaining to plain

Beef

of

Q

paper receipts as we discuss subsequently is not fortified by the agreements for sale and, therefore, it has been submitted on behalf of the builders that the forged receipts required adjudication of issues by a civil court of competent jurisdiction. The contention of the learned Counsel for the builders is not acceptable as the Hon'ble Supreme Court has very categorically held in Dr. J. J. Merchant and others V/s Shrinath Chaturvedi (2002) 6 Supreme Court Cases 635 that even complicated questions of law and facts can very well be decided by the National Commission and the State Commission being headed by a retired judge of Supreme Court and High Court respectively.

We are, therefore, of the considered opinion that there is no such issue of fact or law which cannot be determined by us. The contention of Sri Altaf Mansoor thus being devoid of substance is rejected.

Sri Altaf Mansoor then in the preceding sequence argued that since Sri Manoj Tahalani and Smt. Sheela Devi relied upon some disputed receipts which might be forged and fictitious, the complainants should have been diverted to civil court and their complaints dismissed. In support of his contention the learned Counsel has placed reliance upon the National Commission's decision in R D Papers Limited V/s New India Assurance Company Limited, Supreme Court and National Commission Consumer Law Cases (1996-2005) Page 48. Again on the face of the allegations and counter allegations of the parties before us we can conveniently observe that despite the plain paper receipts of payments relied upon by the two complainants namely Sri Manoj Tahalani and Smt. Sheela Devi and denied by Sri Peush Tandon, there is no question of fact before us which can be stated to be as so complicated as this Commission would not be in a position to decide. Even fraud and forgery have categories. As in the case of M/s. Reliance Builders V/s Maria Noronha and another Supreme Court & National Commission Consumer Law Cases (1996-2005) Page-157, the allegations of fraud and forgery in respect of transfer of shares by means of different share transfer forms might no doubt be a ticklish question but such is not the case before us as because mere denial of some receipts does not mean

Bejo

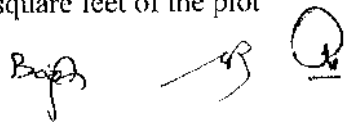
that it becomes a fraudulent transaction so as to be termed, a complicated one. As mentioned above such an argument has come forward on behalf of the builders on the basis of their version that the plain paper chits of payments alleged to have been made to Sri Peush Tandon by Sri Manoj Tahalani and Smt. Sheela Devi were full of complicated issues of fraud and forgery but we would discuss in latter part of this judgment that genuineness of the plain paper chits of payments were not supported by the agreements for sale as such plain paper receipts did not find any mention in the agreements which were executed between the parties subsequent to the dates of receipts.

We are, therefore, of the decisive opinion that mere allegation of fraud and forgery will not drive away these cases out of the jurisdiction of this Commission. The contention of the builders is accordingly turned down.

The crucial question which arises for determination is as to whether the Consolidated Construction Company and the Kasmanda Estates i.e. the sellers were guilty of deficiency in service, promised to be rendered by them to Sri Manoj Tahalani and Smt. Sheela Devi?

We take the case of Sri Manoj Tahalani first.

In this context, it would be relevant to mention that Kasmanda Estates and its proprietor Sri Divyakar Pratap Singh are the owners of the land of Plot No.2, Park Road, Lucknow, admittedly on a prime location as it adjoins the old and famous market widely known as Hazratganj, Lucknow. The Consolidated Construction Company is the builder of the flats on the aforesaid land and Sri Peush Tandon is the managing partner of the said company. Sri Divyakar Pratap Singh and his mother Late Smt. Chandra Prabha Devi on behalf of the Kasmanda Estates and Sri Peush Tandon on behalf of the Construction Company entered into an agreement to construct multi-storied flats on the aforesaid plot in accordance with the terms of agreement dated 29-12-2005 which was registered as late as on 08-08-2007. The terms and conditions of the deed are not very relevant from the present litigation point of view. Enough to say that a large chunk of land measuring 90,000 square feet of the plot



The block contains three handwritten marks: a signature that appears to be 'B. Singh', a stylized signature or initials, and a circled number '9'.

referred to above was proposed for construction of a large number of flats and the two partners namely the Kasmanda Estates and the Construction Company were to share the earnings of the flats in the ratio of 40% - 60% respectively.

The Kasmanda Estates was the collecting agent and perhaps it was in the background of the importance being attached to the name of this estate that the flats which were to come up on this land were known as 'Kasmanda Regent Apartments', Hazratganj, Lucknow. Sri Peush Tandon the managing partner of the Construction Company 'Kasmanda Regent Apartments' entered into an agreement to sell with Sri Manoj Tahalani whereby he, on behalf of the Kasmanda Regent Apartments, agreed to sell flats no.220 and 221 for a sale consideration of Rs.18,16,000/-. It was a tripartite agreement executed on behalf of Kasmanda Estates, Construction Company and Sri Manoj Tahalani. Whereas according to Sri Manoj Tahalani he paid to Sri Peush Tandon a sum of Rs.13,26,000/-, Sri Peush Tandon confronted Sri Manoj Tahalani and stated that he had simply received a sum of Rs.7,80,000/- and this is the main bone of contention between the two. Sri Manoj Tahalani relied upon a number of plain paper receipts dated 16-08-2000, 28-08-2000, 30-08-2000, 04-07-2000 and 10-07-2002. The details are as follows:-

Sl.No.	Date	Amount(Rs.)
01	16-08-2000	25,000.00
02	28-08-2000	25,000.00
03	30-08-2000	2,50,000.00
04	04-07-2000	1,00,000.00
05	10-07-2002	1,40,000.00
TOTAL		5,40,000.00

The photocopies of these plain paper receipts are annexure CA-4 on the record of Appeal No. 489/2007. Sri Altaf Mansoor, learned Counsel appearing for Sri Peush Tandon has categorially denied these receipts and pleaded before us that all these five receipts are forged and fictitious. However, he concedes that the four receipts dated 16-08-2000, 30-08-2000 and two more receipts at annexure CA-3 bearing 23-06-2002 as the date of execution and 01-10-2002 were admitted by him and if we

Bajaj  

take the total of these four receipts, it would emerge out as to be Rs.7,86,000/-. Sri Altaf Mansoor and Sri Sanjiv Bahadur Srivastava, learned Counsel for Sri Peush Tandon and Kasmanda Estates respectively, have, both, argued with reference to the recitals of the Schedule-I of the tripartite agreement dated 31-07-2002 registered on 07-10-2002 and submitted that Sri Manoj Tahalani had agreed on the date of execution of the sale deed i.e. 07-10-2002 that he had paid only the following sums:-

1. Rs.1,00,000/- vide demand draft dated 31-07-2000.
2. Rs.1,00,000/- vide cheque no. 279471 dated 30-08-2000.
3. Rs.2,50,000/- vide cheque no. 121024 dated 09-07-2002.

In all a sum of Rs.4,50,000/- only was admitted to have been paid by Sri Manoj Tahalani and the two builders further conceded receipt of Rs.3,36,000/- vide receipt dated 01-10-2002. Since the agreement for sale had been executed on 31-07-2002, the last receipt of Rs.3,60,000/- could not be referred to. Thus, in all Sri Manoj Tahalani was stated to have paid Rs.7,86,000/- as against the agreed sum of Rs.18,16,000/-. The crux of the allegations and counter allegations is that whereas Sri Manoj Tahalani says that he had paid Rs.13,26,000/- including the amount of Rs.5,40,000/- by means of the plain receipts, the builders contradict him and merely admit receipt of Rs.7,86,000/- and this precisely is the bone of contention.

It is a settled law that if a deed has been reduced to writing, then any contention which is in conflict with its recitals is not admissible in evidence. A crucial question arises that if the plain paper receipts, the genuineness of which has been denied by Sri Peush Tandon were executed on payment of the monies recited therein, why Sri Manoj Tahalani did not insist that the receipts of Rs.5,40,000/- paid by means of plain paper receipts be also incorporated in the agreement for sale? Although it was not pleaded specifically in the complaint that Sri Peush Tandon persuaded Sri Manoj Tahalani to pay the amount of Rs.5,40,000/- to him alone i.e. to the exclusion of the owners of the land of Kasmanda Estates now he explains during the course of arguments



Prakash
JP
Q

:18:

that he was persuaded to do so by Sri Peush Tandon. He explained that Sri Peush Tandon pressurized him to pay that money so as to avoid payment of 40% share to the Kasmanda Estates' owners namely Sri Divyakar Pratap Singh and Smt. Chandra Prabha Devi. There does not seem to be any substance in such an explanation as had it been so Sri Manoj Tahalani would have insisted with Sri Peush Tandon to reduce the total cost of the two flats by Rs.5,40,000/- while executing the agreement for sale. But neither Sri Manoj Tahalani asked for the proportionate reduction of the price, nor any hint or inclination to any other payment though allegedly made prior to the date of sale deed was stated to be in the background in direct or indirect manner. Therefore, we do not find any substance in the explanation of Sri Manoj Tahalani that he had paid Rs.5,40,000/- by way of plain receipts.

It is also shrouded in the misty as to how Rs.1,40,000/- could be said to be the full and final payment for the two flats as recited in the plain receipt dated 10-07-2002. If the full and final payment has been made upto 10-07-2002 then how in the agreement deed for sale executed on 31-07-2002 i.e. 21 days after execution of the said receipt it was simply mentioned that a sum of Rs.5,40,000/- had been received as against the price of Rs.18,16,000/-. The balance price of the agreed price was to be paid at the time of the sale deed to be executed within one year from the date of agreement.

There is one another aspect of the matter and it is that an unholy or unethical alliance of a payment to one of the partners to the exclusion of the other, can neither be attached any legal significance nor such an illegal payment could be said to be binding upon the other partners of Kasmanda Estates. Sri Sanjiv Bahadur Srivastava, learned Counsel for the Kasmanda Estates submitted that since an attempt was made by Sri Manoj Tahalani by underhand payment to Sri Peush Tandon with a view to deceive the owners of the Kasmanda Estates namely Smt. Chandra Prabha Devi and Sri Divyakar Pratap Singh, such a deceitful alliance must be rejected outrightly as a Consumer Forum would not come to the rescue of such persons of irreprehensible character and integrity, may be

Bejn  

that it was Sri Manoj Tahalani or Sri Peush Tandon. The arguments carry weight and, therefore, the payment by Sri Manoj Tahalani to Sri Peush Tandon in accordance with some 'unholy-alliance' has to be ignored and rejected.

Also a possibility cannot be ruled out that some of such payment might have been made but since flats no. 220 and 221 were selected by Smt. Chandra Prabha Devi for her own use and she was inducted into possession of these two flats, the money paid by way of plain paper receipts was repaid by Sri Peush Tandon to Sri Manoj Tahalani and the matter ended up there with final execution of the agreement for sale on 31-07-2002.

Moreover, when there was a prescribed receipt for payment of sale consideration under the heading 'Kasmanda Estates' and Sri Manoj Tahalani made several payments through such printed receipts bearing all details of the transaction, why he preferred to pay by plain paper receipts. Each of such receipts measures three inches – two and half inches; and, it is surprising to note that some of such plain paper receipts were obtained in the same month in which prescribed printed receipts were procured. For instance the complainant Sri Manoj Tahalani paid a sum of Rs.1,00,000/- each by way of genuine and printed receipts dated 16-08-2000 and 30-08-2000 (Annexure CA-02). It is surprising to note that plain paper receipt of Rs.25,000/- was obtained on 16-08-2000 itself and then two more receipts were obtained on 28-08-2000 and 30-08-2000. In other words, the complainant obtained two receipts of Rs.1,00,000/- each on 16-08-2000 and 30-08-2000 (both admitted as CA-2) and on these two dates, obtained two more plain paper receipts of Rs.25,000/- and Rs.2,50,000/-. Definitely such payments by latter receipts would be presumed to have constituted an 'unholy alliance' between the two namely Sri Manoj Tahalani and Sri Peush Tandon. Sri Peush Tandon is in jail on account of lot many criminal cases pending against him and as pleaded by his learned Counsel Sri Altaf Mansoor the fact that he had been falsely implicated in many criminal cases by Sri Manoj Tahalani and alike persons, ^{re} his interest in the cases pending against him in the

Beep

Q

Forum below had suffered a serious prejudice. Had he been out of jail he could have hotly contested the plea of payment by way of simple paper receipts and dislodged the complainant's version. As said earlier Sri Altaf Mansoor has vehemently denied execution of these plain chit-receipts by Sri Peush Tandon and categorically termed them to be as forged and fictitious. We find force in the argument of Sri Altaf Mansoor in so far as the important aspect of the deficiency in service is concerned.

Sri Dipak Seth, learned Counsel for Sri Manoj Tahalani referred to a judgment of this Commission passed in Appeal No. 1294/SC/2005 Consolidated Construction Company and others V/s Sri Manish Kumar in which the payment by way of plain paper receipts issued by Sri Peush Tandon were recognized and as pleaded by Sri Dipak Seth, the plain paper receipts issued to Sri Manoj Tahalani also deserve same treatment. The facts of the said case and the one in hand are not exactly similar so as to call for application of the said judgment to the case of Sri Manoj Tahalani as in that case the payment made by one Sri Tarun Kumar on behalf of the complainant Sri Manish Kumar was admitted and since Sri Tarun Kumar was acting and working for the complainant Sri Manish Kumar, who was carrying on his business at Calcutta, the genuineness of the payment was accepted. Moreover, the plea of 'unholy alliance' between the complainant of that case Sri Manish Kumar or his representative Sri Tarun Kumar with Sri Peush Tandon was not pressed into service nor it had been argued that such payment constituted a mischief so as to deceive the proprietors of Kasmanda Estates. Apart that Sri Peush Tandon had admitted the execution of all such receipts issued to Sri Manish Kumar but in the case in hand Sri Altaf Mansoor, learned Counsel for Sri Peush Tandon has categorically termed all these receipts to be as forged.

Sri Dipak Seth contended further with reference to the written statement filed by Sri Peush Tandon in civil suit of Sri Manoj Tahalani that denial of the plain paper receipts issued to Sri Manoj Tahalani was vague; rather it was an indirect admission as Sri Peush Tandon pleaded that the payments made prior to execution of agreement deed, finding no



By
[Signature] [Signature] [Signature]

reference in the deed itself were to be ignored. As a matter of fact, if we read in between the lines the pleadings of Sri Peush Tandon, we find that he had made an endeavour to plead that receipts which did not find place in the agreement for sale were to be ignored and this definitely proved that he had not admitted execution of plain paper receipts. Neither expert opinion to prove that signatures of Sri Peush Tandon in these receipts were genuine has been filed, nor such an attempt was made before the District Consumer Forum. If at all the complainant wanted to prove his point out of these plain paper receipts having no reference in the agreement for sale executed subsequent to the deeds of these receipts, we find no other option except to ignore them in so far as the written agreement for sale is concerned. For all the above distinguishable features we find ourselves unable to follow the judgment of Appeal No. 1294/2005 of this Commission.

Sri Altaf Mansoor then submitted that the builders had a right to cancel the agreement if the allottee complainant did not come forward to get the sale deed executed within one year from the date of execution of the sale deed and it was under this prerogative that the allotment made in favour of Sri Manoj Tahalani as well as Smt. Sheela Devi were cancelled after issuing show cause notices to them. Para-3 of the agreement provides as follows:

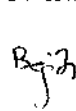
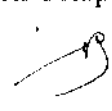

"That if the second party fails to get the sale deed executed and registered in favour of the third party on or before one calendar year from the date of this agreement as mentioned in Clause 3 above, then the third party shall have a right to execute and get the Sale Deed registered through Court of Law at the cost and expenses of the Second party. Similarly, if the third party fails to get the sale deed executed and registered in their favour within the aforesaid stipulated period, on their part, then a mutually agreed amount as agreed between the parties shall be forfeited in favour of the first and second party; and, in that event, the first and second party shall be free to execute the Sale Deed in favour of any person or persons to whom the first and second party may desire."

The second part of the above clause of the agreement deed provides that if the third party i.e. Sri Manoj Tahalani fails to get the sale

BJA  

deed executed within one year; the amount paid shall be forfeited in favour of the first and second party and in that event the first and second party shall be free to execute the sale deed in favour of any person. It would be relevant to note that this clause in the agreement deed is there in the agreements of sale executed in favour of Sri Manoj Tahalani as well as Smt. Sheela Devi. Sri Altaf Mansoor has referred to the show cause notice. A reference can be made to the notice dated 19-02-2003 sent to Sri Manoj Tahalani. By means of this notice a reference was made to the allotment of flats no. 319 and 320 to Sri Manoj Tahalani instead of flats no. 220 and 221 and since these flats were stated to be on prime location, payment on discounted rate was accepted as agreed between the two by 28-02-2003 failing which the discount was liable to be withdrawn and the rate enhanced to Rs.1,300/- per sq. ft. He was, therefore, put under show cause to either pay the balance of the exchanged flats or pay the price at the enhanced rate. Then another notice was sent on 07-03-2003 and an exception to the language used by Sri Manoj Tahalani was indicated and pressure tactics being adopted by him were protested to and he was once again asked to pay the balance of the price at the revised rate. Sri Manoj Tahalani lodged his own protest vide his reply letter of 26-02-2003 and denounced Sri Peush Tandon's demand for higher rate. So was done by him vide another reply notice dated 19-03-2003. The language used in these letters show bitterness between the two and the controversy regarding payments made had also been discussed. Both of them were accusing each other of pressure tactics and blackmailing devices. It is significant to note that in his letter dated 26-02-2003 Sri Manoj Tahalani pleaded payment of Rs.7,86,000/- only and not Rs.13,26,000/-. It clearly shows that the payments made through plain paper receipts were no where in picture in regard to the price of the flats no. 320 and 321 eventually allotted to him. This admission of Sri Manoj Tahalani is bound to prove to be a Waterloo for him as it demolishes his complaint case of his having paid Rs.13,26,000/- and claiming adjustment therefor.

The managing partner of the Consolidated Construction Company

By   

was not in hurry to cancel the allotment of the flats in the name of Sri Manoj Tahalani. After the above notices sent to him in the month of February and March, 2003, Sri Peush Tandon kept on waiting for the stipulated period of one year to lapse and giving a further latitude of many months Sri Peush Tandon sent a legal notice through his Advocate Sri Govind Narain Pandey on 05-12-2003 i.e. more than one and half years after the agreement deed had been executed and narrating details of the ups and downs of their relationship during this period and eventually cancelled the allotment. This cancellation was further confirmed by Sri Peush Tandon vide his personal letter dated 11-02-2004 and the allottee was asked to settle the accounts by coming to his office. At last the managing partner of Consolidated Construction Company cancelled the booking of flats no. 320 and 321 vide notice dated 11-02-2004.

It would be relevant likewise to deal with the case of Smt. Sheela Devi.

She filed a civil suit in the court of Civil Judge (Senior Division), Lucknow (R. S. No. 243/2004 Smt. Sheela Devi V/s Consolidated Construction Company & others) and prayed for interim injunction, seeking restraint against the company from interfering with her possession over the flat allotted to her. Considering the merit of her submission and the subsisting dispute between the parties, the civil court arrived at a conclusion that in the absence of a civil suit for specific performance it was difficult to entertain her plea and thus her prayer for interim stay was rejected.

As a matter of fact, she was a defaulter and failed to get the sale deed executed within the stipulated time and when she did not come forward asking Sri Peush Tandon to execute the sale deed it would be deemed that she failed to make payment of the balance amount in accordance with the terms and conditions of the agreement. The letter dated 11-02-2004 which was sent by Sri Peush Tandon long after the expiry of agreed period of one year from the date of the agreement deed clearly indicates the default on the part of Smt. Sheela Devi. It reads as follows:-





*"Mrs. Shiela Devi,
W/o Mr. Motan Das Jawrani
206, Arya Nagar
Sitapur.*

Ref: Your booking for Flat No.401

Dear Madam,

*Please refer to your booking of the above mentioned flat in
Kasmanda Regent Apartments, 2, Park Road, Lucknow.*

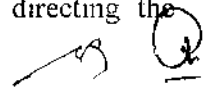
*Inspite of repeated reminders, both verbally and in writing, you
have failed to respond and make your payments which are long
overdue. In the circumstances we have no option but to inform you
that your booking for Flat No.401 stands cancelled. Henceforth
you have no claim on the flat booked by you, and we are at liberty
to allot this flat to whomsoever we desire.*

*You are at liberty to contact the undersigned in writing and visit
the office and settle your claim for refund of the money paid by
you. Please note that you are required to inform the undersigned
in writing about the date and time for your visit to settle your
account.*

*Thanking you,
Yours truly,
Sd/-
Peush Tandon
11/02/04"*

The contents of the letter speak volumes against Smt. Sheela Devi and her failure to get the sale deed executed. She merely paid Rs.4,99,600/- by means of cheque/demand draft as against the total price of Rs.9,87,000/-. Her claim of having paid Rs.1,00,000/- more on 28-09-2002 and Rs.2,42,000/- on 01-10-2002 was denied by Sri Peush Tandon and as discussed earlier in the case of Sri Manoj Tahalani these payments could not be proved by means of validly issued receipts by the company or its managing partner. Any payment by a mode other than the one prescribed cannot be taken cognizance of. If she really wanted to make her point and prove the payment of Rs.8,41,600/- as alleged by her in para-8 of her complaint, she should have filed a civil suit praying for specific performance of the agreement deed and for a direction to Sri Peush Tandon to execute the sale deed in her favour but she simply filed a suit for interim injunction praying for court's order directing the

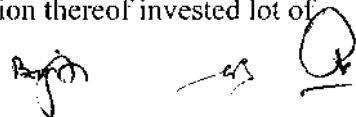
Peush Tandon



company and the Kasmanda Estates to desist from interfering with her possession over the flat in question. As mentioned earlier her application was rejected and she had withdrawn her suit and further did not pray for any relief from a civil court of competent jurisdiction.

The Commissioner's report dated 28-11-2005 clearly proves that not Smt. Sheel Devi but Sri R C Mathur who had in the meantime been allotted Flat No. 401 was in its physical possession. The Advocate Commissioner who submitted the report found Sri R C Mathur and Sri Peush Tandon's representative Sri Mohan Thapa were present at the site of Flat No. 401. Sri Mohan Thapa confirmed that Sri R C Mathur was the lawful allottee of the said flat and Sri R C Mathur showed him an allotment letter dated 12-02-2004 in his favour. Sri R C Mathur was getting the construction of the flat accomplished. Sri R C Mathur in his affidavit filed before us asserted that he continued to be in possession of the flat upto the date it was sealed by the Forum's Commissioner. He had already paid Rs.7,25,000/- to the Consolidated Construction Company under receipt. Also he pleaded that he was a bonafide purchaser and he has filed his own complaint before the Forum below which is still pending. In this way he was deprived of an opportunity of hearing.

Indeed we cannot appreciate the District Consumer Forum's decision to keep his complaint pending and decide the issue without giving him an opportunity not even by impleading him in the complaint filed by Smt. Sheela Devi. Since he was an allottee on payment of a part of its price, he was a necessary party to the litigation. He obtained allotment of the flat in his favour after the allotment in the name of Smt. Sheela Devi had been cancelled. He relied upon the allotment of the flat by Sri Peush Tandon vide his letter dated 12-02-2004 and he was also authorized to complete the construction of the flat. Sri R C Mathur has also relied upon a certificate annexure R-3 whereby it was certified by Sri Peush Tandon that Sri R C Mathur, the allottee of Flat No.401 in 'Kasmanda Regent Apartments' was a lawful purchaser and the power load of 5 KVA had been sanctioned for him. Sri R C Mathur had after purchasing the house and entering into possession thereof invested lot of

Handwritten signatures and initials at the bottom right of the page, including a large 'Q' and some illegible marks.

money as asserted by him and it is confirmed from the Commissioner's report that he was in possession of the flat.

Keeping all these relevant details in respect of the Flat No.401 we are inclined to hold that Consolidated Construction Company cannot be held guilty of deficiency in service on its part. Since it had within its right cancelled the allotment order in favour of Smt. Sheela Devi, the complaint filed by the latter is liable to be dismissed. The possession of the house in question may accordingly be released in favour of Sri R C Mathur.

Learned Counsel for the respondent Sri Manoj Tahalani condemned the commissioner's report on the ground that such a report was obtained contrary to the law. In this context, it was argued that there is no provision for obtaining a commissioner's report under the Consumer Protection Act and thus the very order regarding issuance of a commission to the Advocate Commissioner was void. Reliance has been placed on a citation of Andhra Pradesh High Court reported in AIR 2009 Andhra Pradesh 84. The factual matrix of that decision is entirely different from that of the facts before us. In that case a commission was issued to the Advocate Commissioner to note down the physical features of the building structure with the assistance of a qualified engineer at the time of executing the warrant. Here in the cases before us the Advocate Commissioner was not asked to note down such features of the building being old or new with the help of technical expertise of the civil engineer but it was a simple direction issued to the Advocate Commission to note down as to who was in physical possession of the flats in question and nothing more was required of him. Moreover, the said report was submitted on 28-11-2005 and the direction for issuance of commission was issued even earlier but neither the appellants, nor the respondents questioned the propriety or validity of the said order or the commissioner's report by approaching this Commission. The said issue stood closed and it is not the commissioner's report that would extend some uncalled for advantage to any party. Moreover, Section-13 of the Consumer Protection Act authorizes issuance of a commission and since



the commissioner appointed by the District Consumer Forum-I, Lucknow also examined the witnesses present at the site of the flats and submitted his report, the appointment of commissioner cannot be said to be illegal merely because the commissioner submitted a status report also. We are, therefore, of the positive opinion that the commissioner's report is not unwarranted or illegally obtained; rather it submitted a status report of the flats.

Smt. Prabha Singh is also a lawful allottee of Flat No.320-B. She got possession of the Flat No.320-B vide letter of possession dated 23-02-2004 issued by the Consolidated Construction Company. She stated in her memorandum of appeal that she was a bonafide purchaser for consideration in good faith. According to her she was found in possession of the said flat on the date of visit by the Commissioner. The Commissioner visited the flat on 29-10-2005. The flat was found in unfinished condition. Sri Shailesh Kumar Singh, the representative of Smt. Prabha Singh was present in person alongwith the labourers at the flat for construction/renovation activities. As noted by the Commissioner in his report finishing, decoration, flooring, painting and electrical work were being carried by Smt. Prabha Singh in her flat. Smt. Prabha Singh paid Rs.3,50,000/- on 11-09-2005 under receipt no. 1002 duly issued by the Consolidated Construction Company. Also she deposited on the same date an another sum of Rs.1,40,000/- vide receipt no. 1003. A sum of Rs.1,00,000/- had been paid by her vide receipt no. 1004. She then paid a sum of Rs.9,00,000/- vide Syndicate Bank's pay order dated 13-09-2005 and Rs. 11,00,000/- vide another pay order of the same bank. The Syndicate Bank has also certified that it had issued these two pay orders for Rs.9,00,000/- and Rs.11,00,000/- respectively and credited to the account of Consolidated Construction Company on 14-09-2005. In this way she had paid a total sum of Rs.27,40,000/- for the flat, basement and garage as pleaded by her in her affidavit. We have already discussed the the validity of the cancellation order of this flat in the name of Sri Manoj Tahalani. We thus hold that the Consolidated Construction Company after cancelling the allotment in the name of Sri Manoj Tahalani allotted





the Flat No. 320-B to Smt. Prabha Singh and received its entire price and then handed over its possession to her. Her possession over the flat is very well proved by the documents referred to above particularly the Commissioner's report and the certificate of Sri Peush Tandon. Sri Peush Tandon handed over possession of the flat to her in accordance with the terms and conditions of the agreement for sale dated 06-02-2004. Since Sri Manoj Tahalani committed default in payment of the balance of the agreed price of Flat No. 320-B, the Construction Company and the Kasmanda Estates cannot be accused of deficiency in service.

In view of the discussions made above, we are of the decisive opinion that in so far as flats no. 320-B and 401 are concerned, Smt. Prabha Singh and Sri R C Mathur being lawful allottees and lawful occupants of the flats are entitled to take possession thereof.

As regards Flat No.320 is concerned, it had been allotted to Smt. Reena Singh but now she has relinquished her claim over it and also took her money back. In this situation, the equity in favour of Sri Manoj Tahalani will prevail. It may be recalled that Sri Manoj Tahalani had entered into an agreement with Consolidated Construction Company and Kasmanda Estates for purchase of two flats no. 320 and 321. It was a joint agreement for purchase of the two flats and it is proved from the discussions made above that he had paid a sum of Rs.7,86,000/- for the two flats as against the total price of Rs.18,16,000/-. In this way it is apparent that he paid 'Rs.1,22,000/- short' of the price of one flat. The Consolidated Construction Company while issuing cancellation of the allotment of the two flats in the name of Sri Manoj Tahalani should have been just and reasonable and it was expected that it should have maintained allotment of Flat No. 320 to be as valid. The investment of the huge sum of Rs.7,86,000/- by Sri Manoj Tahalani should not have been ignored in so far as price of one flat is concerned. Since the joint price of the two flats was involved, Sri Manoj Tahalani asserted his claim over both the flats and in his turn Sri Peush Tandon rejected his claim for both of them. Had the two persons been reasonable to the rights of each other, at least one flat i.e. 320 should have gone to Sri Manoj Tahalani -

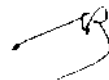


of course subject to payment of the balance price thereof. Therefore, following an equitable course of justice we hold that Sri Manoj Tahalani would be entitled to get the sale deed of Flat No.320 executed in his favour on payment of the balance of its price. However, neither of the parties shall be liable to pay any interest to each other. The Consolidated Construction Company and Kasmanda Estates have utilized the amount of Rs.7,86,000/- deposited by Sri Manoj Tahalani but now since the value of the flat had gone in multiples, the fruits of which will be harvested by the complainant Sri Manoj Tahalani neither of the two parties shall be liable to pay any interest.

Indeed the orders of attachment only a day after the judgment had been pronounced, was unnecessarily a hurried action of the District Consumer Forum and unless the parties were given liberty to prefer their appeals and have their rights determined by this Commission such an action was unwarranted and uncalled for. Moreover, the order regarding attachment was signed by a single member which too nullify the attachment order as every order of a District Consumer Forum is required to be signed by atleast two members.

The long and short of the discussions made above is as follows:-

1. The Consolidated Construction Company and Kasmanda Estates have not committed any deficiency in service in so far as flats no. 320-B and 401 are concerned. Also they are not to blame for any deficiency in service in respect of Flat No. 320 proposed to be sold to Sri Manoj Tahalani first and then to Ms. Rina Singh but since Ms. Rina Singh has relinquished her claim and Sri Manoj Tahalani paid a little short of one flat's price, he would get the said flat.
2. Sri R C Mathur will be entitled to get possession of the Flat No.401 and subject to settlement of accounts if any he will get the sale deed executed in his favour by the Consolidated Construction Company and Kasmanda Estates.
3. Smt. Prabha Singh will be entitled to get possession of the Flat No. 320-B and she will get the sale deed of the said flat executed in her favour by the Consolidated Construction Company and Kasmanda Estates.



:30:


4. Sri Manoj Tahalani will be entitled to get possession of the Flat No. 320 and subject to settlement of accounts he will get the sale deed of the said flat executed in his favour by the Consolidated Construction Company and Kasmanda Estates. His complaint to this extent is allowed.

All the appeals are disposed of in terms of above. The parties shall bear their own costs.

This judgment shall be placed on the record of Appeal No. 410/2007 with its copy to be laid on the record of other four appeals.


(JUSTICE BHANWAR SINGH)
PRESIDENT


(SYED ALI AZHAR RIZVI)
MEMBER


25.02.11
(RAMPAL SINGH)
MEMBER

pnt