

**Maytas Properties Ltd. Vs Bharati Khurana , Asha Khurana , G Sujatha ,
Madhuri Misra , Deutsche Post Finance Company Home Finance Ltd. ,
Arun Kumar Shah , Vimal Kishore Kaushik , Ramesh Chandra Bawa ,
Ramachandra Karunakaran**

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: July 8, 2013

Citation: 2013 0 NCDRC 522

Hon'ble Judges: ASHOK BHAN , VINEETA RAI J.

Advocate: A.M.SINGHVI , R.VENKATA RAMANI , SHOBHA , NEELAM SINGH , Shodhan Babu , Vijayant Paliwal , ROOK RAY , INDU MALHOTRA , Suyodhan , Amitava Chauhan , ANAND SINGH , CHAUHAN , K.RADHA , K.M.RAO , A.V.S.Raju , RAJIV KAPUR , RISHI KAPOOR , PANKAJ YADAV

Judgement

1. FIRST Appeal Nos. 327 to 386 of 2012 have been filed by the Appellant/Developer, M/s. Maytas Properties Ltd. (formerly known as M/s.

Maytas Hill County Pvt. Ltd.) against the judgments and orders dated 27.04.12 passed by the State Consumer Disputes Redressal Commission,

Andhra Pradesh (in short, "the State Commission") in 60 complaints filed by the Respondents/Complainants wherein the State Commission relying

upon its own order passed in C.C. No.30/09 against the very same Developer which was modified by this Commission and upheld by the Hon

"ble Supreme Court, allowed the complaints and directed the Developer to refund the amounts deposited by the Respondents/Complainants along

with interest @ 12% p.a. from the respective dates of deposit till payment together with compensation of Rs. 1,00,000/- and costs of Rs. 10,000/-

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2. FIRST Appeal Nos. 387 to 400 of 2012 and First Appeal Nos. 14 to 25 of 2013 have been filed by the Appellants, State Bank of India and

ICICI Bank Ltd. respectively against the judgments and orders dated 27.04.12 passed by the State Consumer Disputes Redressal Commission,

Andhra Pradesh (in short, the ""State Commission """) in 26 complaints whereby the State Commission allowing the complaints has directed the

Appellant Banks to recover the loan amount borrowed to the Respondents/complainants from the Developer and credit it to the loan accounts of

the Respondnets/Complainants.

First Appeal Nos. 717 to 720 of 2012 have been filed by the Appellant/Developer, M/s. Maytas Properties Ltd. against the judgment and order

dated 25.09.12 passed by the State Consumer Disputes Redressal Commission, Andhra Pradesh (in short, "the State Commission ") in complaint

case nos. 79 and 82/09 and 1 and 97/2010 wherein the State Commission allowing the complaints has directed the Developer to refund the

amount deposited by the Respondents/Complainants along with interest @ 12% p.a. from the respective dates of deposit till payment together with

compensation of Rs.1,00,000/- and costs of Rs. 10,000/-. First Appeal No.8 of 2013 and First Appeal No.29 of 2013 have been filed by the

Maytas Properties Ltd. and the State Bank of Bank respectively challenging the order dated 19.10.12 passed by the State Consumer Disputes

Redressal Commission, Andhra Pradesh in CC No.81/09 wherein also the State Commission allowing the complaint has given the same directions

as above to the Developer and the Bank.

3. FIRST Appeal Nos. 781 and 783/12 have been filed by the Developer and the State Bank of India respectively against the common judgment

and order dated 5.11.12 passed by the State Consumer Disputes Redressal Commission, Andhra Pradesh in CC No.75/10 wherein State

Commission allowing the complaint has given the similar directions to them. State Commission dismissed the complaints against the land owner

companies. Since the Developer had executed sales deeds in favour of some of the Respondents/Complainants, the State Commission has

directed those Respondents/Complainants to re-convey the property to the Developer on receipt of refund of the amount.

4. IT is pertinent to mention that the State Commission has segregated the complaints into several categories and disposed of them by similar

orders dated 27.04.12. The complaints in which the Bank was not a party and where loans were not availed of, were disposed of by 2 separate

but similar orders. The complaints in which banks/financial institutions were made parties had been disposed of vide 5 separate but similar orders.

The banks/financial institutions which were arrayed as parties in the complaints are, State Bank of India, ICICI Bank Ltd. IDBI Bank, Axis Bank

Ltd. BHW Home Finance. All the orders passed by the State Commission are identical, in addition to the directions of refund to the Developer

where the Banks are also made a party.

Since the question of law and facts involved in all these Appeals are the same, we propose to decide all the Appeals by a common order.

Appellant/Developer, M/s. Maytas Properties Ltd. (hereinafter to be referred to as ""the Developer "") - entered into a Development Agreement

cum General Power of Attorney bearing No. 102/206 dated 30.12.05 with the 14 land owner companies for development of Ac. 85.36 Guntas of

land situated in Survey No. 192/P to 198/P, 201/P and 282/P at Bachupally Village, Qutubullapur Mandal, Rang Reddy District. Developer

obtained layout permission from Hyderabad Urban Development Authority (HUDA) on 21.03.06 for development of a township known as

Maytas Hill County "" consisting of 364 independent villas and multistoried residential apartments together with facilities like club apartments,

parks, open spaces, gym, health clubs, playgrounds, shopping centre etc. Developer further entered into agreements of sale with the

Respondents/Complainants (hereinafter to be referred to as the ""Respondents "") for booking of flats/villas/apartment. As per agreements of sale,

the sale consideration was agreed to be paid in installments, i.e., 10% of the sale consideration on the date of booking, another 10% within 15

days from the date of booking and remaining in phased manner and 5% at the time of handing over the possession of the flat. Some of the

Respondents approached the Appellant Banks for grant of housing loan. The Appellant Banks agreed to grant the home loan as per tripartite

agreements executed between the Bank, Developer and the Respondents. Developer executed registered sale deeds in favour of some of the

Respondents in respect of undivided share of land together with unfinished structure.

5. AS per Agreements of Sale, construction of the flats/apartments was to be completed within one year with a grace period of three months. On

07.01.09, founder of M/s. Satyam Computer Services Ltd., Shri Ramalinga Raju confessed that he had diverted the funds from Developer to

computer services and, therefore, there could be delay in completion of the project. Criminal proceedings were initiated against the Directors of the

Developer. There was an award passed against the Developer for Rs.600 crores together with interest of Rs.221 crores. Respondents alleged that

the Developer was deficient in rendering service by not completing the construction within the stipulated time and in diverting the funds; that they

could not collect more than 20% towards advance as per Section 5 of the Andhra Pradesh Apartments (Promotion of Construction and

Ownership) Act, 1987; that the Banks had disbursed the entire loan amount to the Developer without any physical verification or valuation by a

valuer of the construction contrary to the agreement of sale and tripartite agreement. Complainants, being aggrieved, filed the complaints before the

State Commission.

6. ON being served, Developer entered appearance and filed its written statement contesting the complaints on the grounds; that the Developer

commenced the project as per schedule but on a wholly incorrect understanding of Developer 's association with Mr. B. Ramalinga Raju, Founder

of M/s. Satyam Computer Services Ltd. the various investigations and proceedings were instituted against the Developer; that the Banks/financial

institutions which had committed funding withdrew from the project as a result of which the project could not be developed; that the delay in

completion of the project was due to "force majeure " which was beyond the control of the Developer; that the Developer constructed and

delivered possession of 140 independent houses to some of the purchasers and 172 houses were in final stages; that pursuant to the enquiries

initiated against M/s. Satyam Computers Ltd. the case of the Developer was referred to the Company Law Board (in short ""CLB "") which

appointed SBI Capital Markets Ltd. (in short ""SBI Cap "") as transaction Advisor; that the CLB passed an order dated 13.01.11 inducing M/s.

Infrastructure Leasing and Financial Services Ltd., M/s. IL&FS Financial Service Ltd. and M/s. IL and FS Engineering and Construction

Company Ltd. into the company as shareholders by allotting preferential shares; that the Board of Directors of the Developer was re-constituted;

that the new Board of Directors made efforts to arrange further funds to complete the project; that the complaints filed by the Respondents before

the State Commission were not maintainable as in terms of Agreements of Sale in case of any dispute the matter was required to be referred to the

Arbitrator for resolving the same; that by virtue of the orders passed by the CLB on 05.03.09 and 13.01.11, the complainants could not seek

relief before the consumer fora and they were required to approach the CLB.

Appellant Banks, in the cases where the home loan was obtained by the Respondents/Complainants, contested the complaints on the grounds; that

the Respondents, Developer and the Bank entered into a tripartite agreement and the Bank had disbursed the loan amount against the mortgaged

property directly to the Developer on behalf of the Respondents as per agreed terms of the tripartite agreement; that the disbursement of loan to

the Developer was not on the basis of different stages of construction of the flats but was on the basis of the due date fixed for payment as per

agreement of sale; that as per tripartite agreement, the Developer and the Respondents were liable to indemnify the Bank against any risk which

might arise on account of any defect in the title to the property; that the Respondents could not stop payment of EMIs on the ground that the

Developer failed to complete the construction or hand over possession of the flats; that the Respondents were estopped from making any claims in

the light of the terms of tripartite agreement. During the pendency of the complaints before the State Commission, the Developer moved

Miscellaneous Applications seeking dismissal of the complaints on the ground that the complaints were not maintainable in view of the arbitration

clause in the agreements of sale. That as per Arbitration Clause in case of dispute, the matter was required to be referred to the Arbitrator and the

jurisdiction of the Civil Court/any other forum was ousted by the said Arbitration Clause. The said applications were dismissed by the State

Commission holding that the Consumer Fora constituted under the Consumer Protection Act, 1986 had the jurisdiction to try, entertain and

adjudicate upon the complaints as per law laid down by the Apex Court in catena of judgments. Feeling aggrieved, Developer filed Writ Petitions

(27689/10 and batch) before the Andhra Pradesh High Court which were dismissed by observing as under:-

Having regard to the interpretation given by the Supreme Court in FAIR AIR ENGINEERS PVT. LTD (supra) with regard to Section 3 of the

1986 Act and the ratio in LUCKNOW DEVELOPMENT AUTHORITY (supra), we are of the view that the 1986 Act, being a special

enactment, created an additional remedy in favour of the consumers to raise consumer disputes before the Fora constituted under the said Act, and

that Section 8 of the Arbitration Act does not have the effect of taking away such a remedy from the consumers as in the case of civil suits, which

are in the nature of common law remedies. If a party chooses to avail a remedy other than the consumer dispute, he shall be free to do so because

the remedy under the 1986 Act is not in derogation of the other remedies available to such a party and he cannot be denied such right on the

ground of availability of an alternative remedy, such as Arbitration Act as Section 3 of the 1986 Act is intended to provide an additional remedy to

a party and the same is not meant to deny such a remedy to him. Further, by virtue of Section 17 of the Consumer Protection Act the parties can

undoubtedly resort to filing of the complaint as specified under section 17 of the Consumer Protection Act The restriction as to the inherent

jurisdiction would not come in the way for the complainant to file the complaint, provided he fulfils the conditions mentioned in section 17 of the

Consumer Protection Act.

7. DEVELOPER , being aggrieved, filed SLP (C) No. 30367/11 which was dismissed as withdrawn by the Supreme Court vide order dated

18.11.11 with the following observations:-

If the petitioners file an appeal before the National Consumer Disputes Redressal Commission (for short, "the National Commission ") within 30

days and apply for condonation of delay then the prayer shall be considered by the National Commission on its own merits and decided keeping in

view the fact that the petitioners had been pursuing remedy before the High Court. It is needless to say that the National Commission shall decide

the appeal uninfluenced by the observations made in the order passed by the High Court.

State Commission, after taking into consideration the facts, pleadings and the evidence led by the parties, came to the conclusion that the

Developer was deficient in rendering service by not completing the construction of the flats/handing over the possession of flats within the stipulated

time as per Agreements. State Commission relying upon its earlier judgment passed in Complaint Case No.30/09 against the same very Developer

which was modified by this Commission and upheld by the Hon "ble Supreme Court, allowed the complaints and directed the Developer to refund

the amounts deposited by the Respondents/Complainants along with interest @ 12% p.a. from the respective dates of deposit till payment together

with compensation of Rs.1,00,000/- and costs of Rs.10,000/-. Since, in some of the cases the Sale Deeds were executed in favour of the

Respondents, the State Commission directed the Respondents to re-convey the property to the Developer on receipt of the refund of the amount.

Complaints against the land owner companies were dismissed.

8. STATE Commission held the Developer deficient in rendering the service by observing as under:-

26. Since the developer could not prove the stages of construction or that it would hand over possession within a reasonable period, and the

period that was originally stipulated was already expired, and all through the complainants have been paying EMIs, we are of the opinion that it

would be unjust that the complainants be directed to go on paying the amounts to the banks without there being any hope of getting the project

completed. 27. The Complainant by issuing notice to the developer cancelled the above said agreement and directed the Developer to pay the

consideration received so far, as no construction was taken up nor completed, and sought for refund of the amount with penalty @ Rs.5/- per sqfts.

as per clause 7 (a to d) of the agreement. However, we do not see any justification in impleading the original owners of property, who have no

subsisting interest in the property. They have parted their title in favour of the Developer. Therefore, the claims against them do not sustain. The

complaints are liable to be dismissed against them 29. In some of the cases, sales deeds were executed in favour of the complainants by the

developer conveying the title. Obviously, the complainants cannot have title as well as refund of the amount, since the very sale has been frustrated,

in such a case, when the developer has executed the sale deed and there is no prospect of either constructing flats or delivering the property to the

complainants, the Hon "ble Supreme Court in somewhat similar case Vinod Kumar Thareja Vs. M/s. Alpha Construction reported in CPJII

(2011) CPJ 3 SC while giving direction to refund the amount also directed to re-convey the property to the builder. Therefore, we direct the

complainants to execute re-conveyance deed on receipt of amount payable by the developer. The registration charges shall be borne by the

developer. This is in conformity with the above said decision of the Hon "ble Supreme Court. 30. We may also state herein that the orders of this

Commission against the same developer (vide C.C.No.30/2009) directing to refund the amount with interest @ 12% p.a has been upheld by the

National Commission in F.A. No.189/2010 while reducing the compensation from Rs.5 lakhs to Rs.1 lakh. The SLP moved by the developer

before the Hon "ble Supreme Court in Appeal (Civil) No. 26256/2010 was dismissed on 27.09.10. Therefore, these matters are covered by the

above decisions and there is no need for any distinction to be made between these cases. These contentions do not sustain.

IL & FS which was inducted and permitted to complete the project by the CLB vide its order dated 13.01.11, raised an additional plea which

was not raised earlier by the Developer in Complaint Case No.30/09 that by virtue of orders of the CLB dated 05.03.09 and 13.01.11 which

were passed with the consent of Respondents, the Respondents could not seek the relief before the consumer fora and they ought to have

approached the CLB for redressal of their grievances. The said contention was rejected by the State Commission on the grounds; that neither the

Respondents were a party to the proceedings pending before the CLB nor were they issued any notice by the CLB; that the orders passed by the

CLB were not binding upon the Respondents and did not bar the consumer fora to decide the complaints filed by them.

In the complaints in which the Banks/Financial Institutions were made a Respondent Party, State Commission held that the Appellant

Banks/Financial Institutions were deficient in rendering service in disbursing the loan amount to the Developer without verifying the stage and nature

of the construction. State Commission also held that the Respondents were not liable to pay any further EMIs. State Commission directed the

Banks/financial institutions to recover the loan amount plus whatever interest due from the Developer and credit it to the loan account of the

Respondents. State Commission observed as under,â€:-

The bank has undoubtedly violated the terms of the tripartite agreement and released the amount even without bothering to verify as to the stage

and nature of construction. In other words, the bank financed to a non-existent project or incomplete project, duping its own customers. Now the

complainants would be unnecessarily hard pressed to pay the amounts towards EMI without there being any hope of getting the apartments as

the developer is under winding up proceedings. The bank cannot take advantage of its own indiscretion. This is unjust and unethical. If the bank

released the amounts contrary to tripartite agreement it has to suffer for the consequential losses. Whatever loss caused thereby it could as well as

approach appropriate forum for recovery of the amount from the developer, to which it has released the amount in one go. The bank under the

terms entitled to recover from the developer to which it had paid the amounts. It cannot turn round and claim against the complainants. It is not

under original stipulation that the bank had to pay the entire amount to the developer. The developer also agreed to refund the amount if there are

cancellations of the agreement or failure to fulfill its commitments. The agreement that was arrived at earlier was fair and no party would benefit

from the lapses or mistakes of the other. Therefore, the complainants are not liable to pay the EMIs. "" The Bank has to collect the loan amount

plus whatever interest and other legally permissible charges from the developer and credit it to the complainant's loan account. It shall not collect

further EMI's nor entitled to any more amount except the amount, if any, remained unpaid by the complainants towards loan granted to him. The

Bank has no authority to complain to CIBIL. In fact if there is a provision, the CIBIL has to enter the name of the bank, as one of the violators of

guidelines of the banks.

9. FEELING aggrieved, the Developer as well as the Banks have filed the present appeals. We have heard the Ld. Counsel for the parties at

length. SUBMISSIONS MADE IN FIRST APPEAL NOS. 327 TO 386 OF 2012, 717 TO 720 OF 2012, 781/12 AND 8/13 FILED BY

THE DEVELOPER Ld. Senior Counsel, Shri A.M. Singhvi, appearing for the Developer contends that the expiry date of construction was not the

same for all the agreements of sale as the agreements of sale were executed on different dates till the end of the year 2009; that since the project

was abandoned midway and construction activity came to a standstill for a period of two years after the Satyam scam; the purchasers under the

misapprehension that the project will not be completed, stopped paying the installments and the various Investors/Banks/Financial Institutions

which had committed funding of the project, also withdrew from the project; that due to acute shortage of funds the development of the project

was jeopardized; that various attachments and court orders also delayed the project; that pursuant to the inquiries initiated against M/s. Satyam

Computers Services Ltd., the case of the Developer was referred to the CLB; that CLB vide order dated 13.01.11 inducted IL & FS group as

the new promoter of the Developer and consequently the Board of Directors of the Developer was re-constituted; that with the new arrangements

made by the CLB, the Developer has completed 9 out of 11 Apartment Towers of the "Hill Country Project"; that the Developer is in a position

to hand over the possession of the flats to the Respondents; that by virtue of order dated 13.01.11 passed by the CLB, the Respondents could not

seek remedy of their grievances before the Consumer Fora; that the State Commission erred in holding that the order passed by the CLB was not

binding upon the Respondents as they were not a party before the CLB; that no individual notices were required to be given to the Respondents as

the Respondents were represented by the Hill County Home Owners Welfare Association, a body representing the interest of all the purchasers;

that the Hill County Home Owners Welfare Association was impleaded as a party by the CLB and the arrangements were made by the CLB with

the consent of the Association; that the State Commission has erroneously directed the refund of the deposited amounts to the Respondents on the

presumption that the order of CLB had not been complied with and there was no progress in the construction; that in most of the complaints,

Respondents had prayed for handing over of the possession of the finished flats and in the alternative for refund of deposited amount but the State

Commission by a blanket order has directed the refund of amount to all the Respondents; that pursuant to the order dated 13.01.11 passed by the

CLB, IL&FS Group had infused Rs.425 crores to meet the commitments of the Hill County Project and the Developer has no funds to pay the

dues either to the Respondents or the Bank; that if the funds are diverted in making refunds to the Respondents or paying amounts to the Bank, it

would be at the cost of the other customers of the "Hill County Project" as the project may not be completed due to lack of funds; that the State

Commission erred in observing that there was no evidence on record to show as to what was the stage of construction when the additional affidavit

of the Developer was on record giving all the details about progress in construction; that the application filed by the Developer for appointment of

Commissioner to inspect the stage of construction was illegally rejected by the State Commission; that the delay in completion of the construction

and handing over of the finished flats to the Respondents had occurred due to "force majeure" events which were beyond the control of the

Developer; that the project is near completion and the new Promoters will not charge any penal interest on the delayed payment and also not

charge for any escalation in cost of construction.

10. LD . Senior Counsel appearing for the Developer further submitted that the State Commission wrongly proceeded to pass orders in favour of

the Banks/Financial Institutions as if they were complainants before it; that after the Satyam Episode in 2009, Respondents started defaulting in

making the payments of installments to the Banks/Financial Institutions; that the Developer has been meeting Banks/Financial Institutions

periodically to help the Respondents to arrive at settlement and for restructuring of their loans; that there was no occasion or reason for the

Respondents to apprehend about fate of the project or to stop making payment of their EMIs to the Bank and, therefore, there was no justification

in shifting Respondents " liability towards the Bank to the Developer; that the State Commission has held the Banks/Financial Institutions deficient

in service and, therefore, the Banks/Financial Institutions should restructure the Respondents " loan account.
SUBMISSIONS MADE IN FIRST

APPEAL NOS. 387 TO 400 OF 2012, 783/12, 29/13 AND 14 TO 25 OF 2013 FILED BY THE STATE BANK OF INDIA AND ICICI

BANK LTD. Financial Institutions other than State Bank of India and ICICI Bank Ltd. have not challenged the orders passed by the State

Commission. The orders passed against the Financial Institutions other than State Bank of India and ICICI Bank Ltd. have attained finality. *Ld.*

Counsel appearing for the Appellant State Bank of India contends that the Appellant cannot be fastened with any liability to collect the loan amount

from the Developer and the Respondents cannot be granted liberty not to pay the EMIs to the Appellant Bank; that it was agreed between the

parties that the payment of the sale consideration of the flats would be made in installments on due dates fixed in the Agreements of Sale; that the

disbursement of loan amount to the Developer directly was not linked to the stage of construction and, therefore, the bank was not liable to review

the progress of construction; that as per clause 7 (a) of the tripartite agreement in the event of cancellation of allotment of schedule property by the

Developer, the Developer was liable to pay all amounts received by it from the Bank on behalf of the Respondents and, therefore, in the present

case as the allotment was not cancelled by the Developer, the Bank was not liable to recover the loan amount from the Developer; that there was

no "Debtor - Creditor relationship " between the Developer and the Bank and the amounts were released to the Developer on the basis of duly

signed disbursement request forms submitted by the Respondents and as such it is not open for the Bank to claim the recovery of the loan amount

from the Developer. *Ld.* Counsel appearing for the Appellant Bank further contends that no complaint under the Consumer Protection Act, 1986

was maintainable against the Appellant Bank as they had acted under the agreed terms and conditions of the loan agreement; that the Respondents

cannot escape the liability of making the payment of loan to the Banks and the Banks could not be made liable to collect the loan amount from the

Developer; that if the construction of the project was not completed by the Developer, the Respondents were at liberty to take appropriate action

against the Developer but that cannot be the ground for the Respondents to seek a declaratory relief or direction not to insist for repayment of the

loan amount; that the State Commission erred in holding that the Appellant Bank did not try to recover the loan amount from the Developer by

invoking clauses of tripartite agreement; that the home loan was granted to the Respondents for purchase of the residential property and the

Appellant Bank is legally entitled to recover the dues from the Respondents.

Ld. Counsel appearing for the Appellant, ICICI Bank Ltd. submits that the Appellant Bank in all the 12 appeals have disbursed the loan amount

based only on the duly signed disbursement request forms submitted by the customers and there has been no direct disbursement; that the

Appellant Bank has not disbursed the entire loan amount at one go. SUBMISSIONS MADE ON BEHALF OF THE RESPONDENTS/

COMPLAINANTS IN BOTH SET OF APPEALS Ld. Counsel appearing for the Respondents/Complainants contends that the direction to the

IL&FS Group to complete the Maytas Hill County Residential Project Phase I within 18 months of its induction as Promoter by the CLB order

dated 13.01.11 would not preclude the individual Respondents from agitating their rights in the complaints filed by them before the Consumer

Fora; that the orders passed by the CLB were not binding upon the Respondents as they were not member of the Hill County Home Owners

Association which participated in the proceedings before the CLB; that the Respondents were not issued any individual notice by the CLB; that the

order dated 13.01.11 passed by the CLB was not in the nature of a scheme under the provisions of the Companies Act, 1956 and, therefore, the

present batch of Appeals would have to be decided on its merit; that most of the Respondents had prayed only for refund of their amounts and the

remaining Respondents who sought for alternative reliefs had categorically given up their claim for finished flats before the State Commission and

restricted their claim for the refund of their amounts; that the State Commission taking into consideration the fact that the project was nowhere near

completion, directed the Developer to refund the amounts paid by the Respondents; that in case the project is completed, the Developer can sell

the flats in the open market at current market rates which will fetch more money for the Developer than the amounts at which they were agreed to

be sold to the Respondents herein; that the Respondents are not interested in the allotment of the flats as they are facing litigations initiated by the

Bank under the provisions of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, The

Recovery of Debts due to Banks and the Financial Institution Act, 1993 and The Negotiable Instruments Act, 1881;

11. LD . Counsel for the Respondents vehemently argued that as per Clause 13 (c) of the Loan Sanction letter and as per clauses of the tripartite

agreement the Appellant Banks were obligated to release the home loan amounts in phases to the Developer on the basis of progress of the

construction; that the Appellant Banks in collusion with the Developer disbursed the entire home loan amount along with the contribution of the

Respondents before the commencement of construction at the project site and even without verifying the existence of the approved building plans;

that as per tripartite agreement executed between the parties, in the event of cancellation of allotment of flat the developer was liable to refund the

entire loan amount to the Appellant within a period of 60 days but the Appellant Banks did not initiate any steps for recovery of the loan amount

from the Developer; that if the Respondents take possession of their respective flats, the Appellants Bank would immediately initiate proceedings

for attachment of the Flats towards recovery of the alleged dues; that the Appellant Banks cannot have any grievance against the order dated

27.04.12 passed by the State Commission as their interest has been adequately protected by granting liberty to recover the entire loan amount

from the Developer; FINDINGS IN FIRST APPEAL NOS. 327 TO 386 OF 2012, 717 TO 720 OF 2912, 781/12 AND 8/13 FILED BY

THE DEVELOPER

12. M /s. Maytas Properties Ltd. - Developer - entered into individual agreements of sale/construction with each of the individual Respondents.

The relevant clause from one of the agreements of sale is reproduced herein for ready reference:-

3. Construction (a) Having received the consideration specified in Schedule 2, the first party agrees to complete the construction of the apartment

in a timely manner by 31st December, 2008 subject to the availability of the steel or other construction material and other causes beyond the

control of the first party. (b) The first party shall have a further grace period of three months. (c) The first party shall be entitled to further periods if

the construction is delayed due to flooding, due to rain, war, earthquake, fire, stay of construction by any Court or authority or any other

emergencies including riots and any terrorist activities, etc.; (d) In the event of any further delay beyond time stipulated in Clause 3 (a), 3(b), and

3(c), the first party shall pay the second party an amount of Rs.5 per sq. feet of contracted built-up area for every month or delay or part thereof

upto a maximum of 8 months. After lapse of such extended period of 8 months, the second party can terminate this agreement and seek for

immediate refund of total consideration amount paid to the first party i.e. the sale consideration amount and the construction agreement

consideration amount alongwith the Corpus Fund as defined vide Clause 1 (c) above and the first party shall refund the amount within 30 days

from the date of such termination.

The individual sale agreements entered into by the Respondents specified a payment schedule to the Developer. Some of the Respondents paid the

entire sale consideration from their own pocket. Since some of the Respondents after having paid the initial amount towards their contribution to

the Developer, wanted to avail home loans, the Developer approached the various Banks/financial institutions to render financial assistance to them

which is evident from the following clause of the tripartite agreement entered into between the Developer, the Banks/Financial Institutions and the

Respondents:- ""AND WHEREAS the Developer has approached SBI to render financial assistance for the construction of dwelling units to such

of its dwelling unit purchaser/members as may be in need thereof and in consideration of SBI doing so in accordance with its lending policies

13. BANKS /Financial Institutions agreed to grant home loans to the Respondents in terms of the tripartite agreement executed between the

Banks, Respondents and Developer. Some of the relevant clauses from one of the tripartite agreement wherein Bank/Financial Institution was a

party, are reproduced herein for ready reference:-

2. SBI shall make disbursement of the sanctioned loan by making payments to the Developer directly on behalf of the borrowers and payment(s)

made to the Developer shall be deemed to be payment(s) made to the borrowers and the borrowers shall in each case be liable for the amount of

the loan disbursed on his/her behalf to the Developer, as though the same has been disbursed directly to him/her. It is further agreed by the

borrower that SBI shall not be responsible or liable to ensure or ascertain the progress of the construction and mere demands for disbursement

would be sufficient for SBI to effect disbursement as aforesaid. However, SBI at its sole discretion, shall disburse the loan in suitable installments,

at the request of borrower/Developer or in suitable installments to be decided by SBI with reference to need or progress of construction, which

decision shall be final and binding on the borrower(s)/Developer. The borrower shall be responsible to follow up with SBI to make disbursement

on his/her behalf as per any agreement, payment schedule he/she may have with the Developer. Notwithstanding anything to the contrary contained

herein, SBI may in its sole discretion refuse to disburse the loan until; (a) Borrower(s) has/have paid his/her own contribution in full to the

Developer (the cost of the dwelling unit less the loan) and the progress and need of the construction justifies the disbursement requested. 6. That in

the event of cancellation of allotment to the borrower by the Developer for any reason whatsoever the Developer shall refund to SBI only forthwith

the entire amounts received from SBI within 60 days subject to clause No. 7 below. The balance if any after adjusting the dues, interest, costs and

other amounts recoverable by the SBI, shall be returned to the borrower by SBI. The Developer herein undertakes not to refund any amount, on

any account, under any circumstances to the borrower without the written consent of SBI. 7(a) Upon cancellation of the allotment of the schedule

property to the borrower for any reason, the Developer shall immediately intimate about the same in writing to SBI. Upon receipt of such

intimation, SBI shall notify the Developer all amounts due to it from the borrower. In such an event, the Developer shall forthwith pay SBI all

amounts received by it from SBI on behalf of the borrower within 60 days of receipt of such statement during which period, the Developer shall

pay interest to SBI, at the rate of interest on such amount shall be the same as agreed between the SBI and borrower in the loan agreement. (b)

Further, the Developer hereby agrees that it shall also pay all the remaining amounts due and payable to SBI from the borrower such as defaulted

payments, additional interest etc. after deducting reasonable expenses (as agreed by both Developer and SBI) incurred by the Developer from the

sale proceeds of the property

14. AFTER entering into tripartite agreements, the Banks/Financial Institutions sanctioned the home loans to the Respondents. The loan

agreements were executed between the Banks/Financial Institutions and the Respondents. As per loan agreements, in case of any delay in the

payment of EMI, the borrower was liable to pay an additional interest and other penal charges. Relevant clause of one of the sample loan

agreements, entered into by one of the Respondents with the BHW Home Finance Ltd. reads as under:-

2.6 Delay in payment of EMIs/PEMIs/Interest/ other dues, etc. (b) the delay in payment of EMIs/PEMIs/Interest or any other dues shall render

the borrower liable to pay additional interest at the rate of 24 per cent p.a. or at such higher rate as per the rules of BHW Home Finance Ltd. in

that behalf as in force from time to time. In such event, the borrower shall also be liable to pay incidental charges and costs of BHW Home Finance

Ltd.

After the sanction of the loans, both the Banks and the Financial Institutions disbursed the entire and/or substantial loan amount to the Developer

contrary to the terms of the tripartite agreement which have been extracted hereinabove. Developer after making some initial construction

completely abandoned the project in 2008. One of the purchasers of the flat filed complaint No.30/09 before the State Commission which was

allowed by it directing the Developer/Opposite Party to refund the deposited amount with interest @ 12% p.a. from 4.08.08, i.e., the date of

payment of the last installment by the complainant together with compensation of Rs.5 lakh and costs of Rs.5,000/-. Developer, being aggrieved,

filed First Appeal No.189/10 which was disposed of by this Commission vide order dated 12.08.10. This Commission modified the order of the

State Commission to the extent that the amount of compensation was reduced from Rs.5,00,000/- to Rs.1,00,000/-. Developer challenging the

order passed by this Commission filed SLP (C) No. 26256/10 which was dismissed by the Supreme Court by its order dated 27.09.10.

15. DURING the pendency of the present proceedings before the State Commission, the Central Government filed an application before the CLB

under the provisions of the Companies Act, 1956 seeking change of management of the Maytas Properties Ltd. During the course of proceedings

before the CLB, competitive bidding took place wherein 28 companies evinced expression of interest to take over the project and the assets and

liabilities of the Developer. Out of 28 companies which had evinced expression of interest, 9 responded and out of 9, IL&FS and GVK Group

submitted their concrete proposals. SBI Capital Market was the Advisor for transaction. M/s. Maytas Properties Ltd. submitted Company

Application No.24/11 before the CLB On 13.01.11 wherein a prayer was made to induct IL&FS as promoter. The application was unopposed

and was allowed by accepting the entire proposal made in the application, on the same date. CLB vide its order dated 13.01.11 permitted IL&FS

group to be the new promoter of the Developer wherein it would acquire 80% in equity share capital by investing Rs.20 lakhs. IL&FS Group was

permitted to take over the management control of the Developer and re-constitute the Board of Directors whereby it would have 4 nominees as

Directors including the Chairman. IL&FS Group was to mobilize the fund of Rs.150 crores within a period of three months from the date of order.

IL&FS Group was to complete the Maytas Hill County Residential Project Phase I within 18 months of its induction. It was required to arrange

the finances to complete the project. It was also ordered by the CLB that the IL&FS Group shall settle all disputes, tax liability and the contractual

dues and other creditors of the Developer.

16. DURING the course of final arguments on 16.05.13 and 22.05.13 in the present batch of Appeals, the Ld. Senior Counsel, Shri A.M.

Singhvi, appearing for the Appellant/Developer fairly conceded that the CLB proceedings/orders did not bind this Commission in any manner

whatsoever inasmuch as the order of 13.01.11 was not in the nature of a scheme under the provisions of the Companies Act, 1956. That this

Commission would have jurisdiction to decide the appeals on their merit by taking into consideration the overall facts and circumstances. Ld.

Senior Counsel appearing for the Developer sought to contend that the order dated 13.01.11 passed by the CLB was a consent order and the

Respondents herein were allegedly bound by it as they were represented by the Hill County Owners Welfare Association. Similar contention

raised by the Appellant/Developer before the State Commission was rejected by it by observing that there was no proof that the Respondents

were members of the said Association or that any notice was served upon the Respondents individually in order to bind them. The Respondents

had categorically stated that the Hill County Owners Welfare Association did not represent their interests. That till date the Developer had not even

bothered to implead the Respondents before the CLB. According to the Respondents, the Hill County Owners Welfare Association was acting in

connivance with the Developer as it was present before the CLB on the first day itself on 13.01.11 when the period of 18 months was given to the

Developer to complete the project. During the pendency of the Appeals, the period to complete the project has been extended by the CLB till

30.06.13. The project is not complete as yet.

It may be mentioned here that the Hill County Owners Welfare Association filed an Interim Application No.3141/13 before this Commission

seeking impleadment which was later on got dismissed as withdrawn reserving liberty with the Association or members other than the Respondents

herein to start independent proceedings. We do not find any substance in the contention raised by the Ld. Senior Counsel for the Developer that

the order dated 13.01.11 passed by the CLB could be termed as a consent order on behalf of the Respondents in the present Appeals. The

presence of some advocates on behalf of the Hill County Owners Welfare Association who did not oppose the prayer made in the C.A.No.24/11

filed by the Developer would have no impact on the complaints filed before the State Commission. There is nothing on record to show that the said

Association represented the interests of the Respondents herein. Any consent given by an advocate on behalf of that Association for the

completion of the project would not tantamount to waiver of the rights of the Respondents. As per averments made by the Respondents, the said

Association has been acting in connivance and behest of the Developer and does not represent the interest of the Respondents who had filed their

complaints much prior to the passing of the order by the CLB. It may be mentioned here that a majority of the Respondents have formed their own

Association which is duly registered in the name and style of M/s. Maytas Hill County Apartment Buyers Association. For the reasons stated

above, it is held that the order dated 13.01.11 passed by the CLB cannot be taken as a consent order on behalf of the Respondents herein. Ld.

Senior Counsel appearing for the Developer strenuously contended that the State Commission erred in directing the Developer to refund the

amount contrary to the prayer made in the complaints. That majority of the Respondents had asked for possession of the finished flats as the main

relief and had sought the relief for refund of the amount in the alternative.

17. WE do not find any substance in this submission as well. Out of the 66 Appeals, 39 Respondents had prayed for possession of the finished flat

as the main relief and the relief for refund of the amount in the alternative. 27 Respondents herein had prayed for refund of their amounts only. 39

Respondents who had sought the possession of the flat as the main relief had categorically given up their claim for finished flats before the State

Commission and confined their relief for the refund of the amount only. State Commission taking into consideration the fact that the project was

nowhere near completion, directed the Developer to refund the amounts deposited by the Respondents. We do not find any infirmity in this finding.

The project is still not complete. At the time of admission hearing of the appeals on 10.07.12, the Ld. Counsel appearing for the Developer had

stated before us that out of 11 towers, 9 were near completion; that the Respondents/ Complainants will be handed over the flats as per agreement

between the parties within a reasonable time at the old rates subject to the Respondents paying the balance amount; that the Appellant shall

suitably compensate the Respondents for delayed handing over of the possession. On the basis of his submissions, this Commission passed the

following order on 10.07.12.

Counsel for the appellant states that out of the 11 towers, 9 are near completion; that the complainants/respondents will be handed over the flats

as per agreement between the parties within a reasonable time which shall be submitted before the Commission at the old rates subject to the

Respondents paying the balance amount; that the appellant shall suitably compensate the respondents for delayed handing over of the possession.

Seek time to get firm instructions and put the same on affidavit. Undertakes to file the affidavit before the next date of hearing with an advance

copy to the Respondents.

18. SUBSEQUENTLY , on a statement made by the Ld. Counsel for the parties that certain developments had taken place after passing of order

by this Commission on 10.07.12, the following order was passed on 15.01.13:-

Ms.Indu Malhotra, learned senior counsel appearing on behalf of the respondents in majority of the cases has brought to our notice that a similar

order passed by the State Commission has been upheld by this Commission in F.A. No.189/2010 against which SLP was filed which has been

dismissed. Learned counsel appearing for the appellant submits that certain developments have taken place after the passing of the order by this

Commission; that IL&FS, a new promoter, has stepped in and has taken over the assets and liabilities of the previous promoter; that Company

Law Board (CLB) by its order dated 13.1.2011 permitted the IL&FS to step in and take over as a new promoter and develop the property

within the time frame of 18 months. Buildings have not been completed in spite of the lapse of 18 months. New promoter has neither applied for

nor got extension of time from CLB. Learned counsel for the appellant submits that in view of the subsequent developments, the decision rendered

by this Commission in the earlier case is not binding. On 10.7.2012, counsel for the appellant had made a statement before us that out of 11

towers, 9 are near completion; that the complainant/ respondents will be handed over the flats as per agreement between the parties within a

reasonable time which shall be submitted before this Commission at the old rates subject to the respondents paying the balance amount; that the

appellant shall suitably compensate the respondents for delayed handing over of the possession. Appellant had taken time to file the affidavit before

the next date of hearing with an advance copy to the respondents. Pursuant to the undertaking given, appellants have filed the affidavit. Ms.Indu

Malhotra, senior counsel appearing for the respondents submits that offer made by the appellant is not acceptable to her clients; that since the

property has been put under attachment by the Income Tax Department as per the statement made in the affidavit filed by the appellant themselves,

complainants would not be able to get a clear title to the property; that the complainants are not paying the EMIs as possession has not been given.

Complainants had given postdated cheques to the bank. Bank has initiated proceedings under Section 138 of the Negotiable Instruments Act for

recovery and under the Securitization Act. Learned counsel appearing for the appellant submits that the High Court of Andhra Pradesh in Writ

Petitions No.9227/2010 and other connected cases, by a common order dated 5.12.2012, in order to protect the interest of the purchasers and

revenue, has issued certain instructions, one of which reads as under:- ""In respect of units (villas/ apartments/ plots) where full consideration was

received by MPL, sale deeds executed in favour of purchasers and registered and possession of the plots and villas/ apartments (along with

undivided) share of land) mentioned in the respective sale deeds has been delivered, we declare that such units and the undivided share in land

transferred along with villas/apartments, covered by such registered sale deeds would be free from attachment and the attachment orders passed

by the I.T. Department would have no application to them. This position in law is also accepted by the Revenue. ""

According to him, said instructions will protect the interest of the respondents as the property would be transferred to them free from any

attachment. Counsel for the appellant is directed to supply a copy of the order passed by the CLB, High Court of Andhra Pradesh in Civil Writ

Petition No.9227/2010 and other connected cases to the counsel for the respondent. Counsel for the respondent is directed to supply a copy of

the proceedings initiated by the banks against the complainants to the counsel for the appellant. Adjourned to 19th March 2013 to enable the

counsel for the parties to address their arguments regarding the effect and impact of the order passed by the CLB. Respective counsel appearing

for respective banks are also directed to seek instructions. Counsel for the respondent is also directed to supply a copy of the order passed by this

Commission referred to above and the order passed by the Supreme Court in SLP No.26256/2010.

On 20.03.13, Developer filed an application seeking permission to file some additional documents which was declined on the ground that the

additional documents by way of additional evidence could not be taken at this belated stage. However, the order passed by the High Court of

Andhra Pradesh in W.P.No.9227/10 will be taken note of while deciding these appeals. This Commission on 16.05.13 has passed the following

order:-

Counsel for the appellant states that Company Law Board had extended the time for completion of the project by 30.6.2013. Adjourned to

22nd May 2013 to enable the appellant to file an affidavit as to within how much time the project would be completed in all respects including the

facilities like water, road, sewerage, electricity, elevators and other such facilities to make the units livable. According to the learned counsel for the

respondent, respondents had purchased the flats after taking loan from the banks; that the project was to be completed by 2008; that the bank

would charge penal interest @ 24% for the delayed EMIs. Further states that the bank has also started proceedings under Section 138 of the

Negotiable Instruments Act and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Counsel for

the appellant is directed to state as to what compensation the appellant shall pay to the respondents for the delay caused in completion of the

project which would take care of the interest which the bank will charge from the complainants for the delay in making the payments. Interim

Application No.3141/2013 seeking impleadment is dismissed as withdrawn reserving liberty with the Association or members other than the

complainants in these cases to start independent proceedings. Adjourned to 22nd May 2013. Affidavit be filed on or before 20.5.2013 with an

advance copy to the counsel for the respondents. In compliance of our order dated 16.05.13, Developer has filed a detailed affidavit with regard

to the status of construction, delivery of the apartments to the Respondents, interest to be charged by the Bank in cases where the Respondents

have taken bank loans, Access Roads, Sewerage, Power, water, elevators etc. It is stated in the affidavit that the 4 towers, i.e. Darjeeling,

Khandala, Mussoorie and Nainital have been completed and notices have been issued from November, 2012 onward to the purchasers for

handing over possession. 5 towers, namely, Dalhousie, Shimla, Ooty, Munnar and Manali are to be completed within the extended time schedule

of end of June, 2013. With regard to remaining 2 towers, namely, Kodai and Coonoor, it was decided not to commence the construction as the

number of bookings in these two towers were under 57 out of a total of 132 apartments. It is further stated that the work of access roads had

been completed for the stages 1 to 4 and the similar work for stage 5 is under progress and expected to be completed by 1st week of July, 2013.

The tar road connectivity to the areas leading to the apartment towers is under construction and would be completed by end of July, 2013.

Permanent Sewage Treatment Plant works have been commissioned. External drainage, sewerage and water line works are in progress and will be

completed by end of June, 2013. The application for power connection was submitted with APCPDCL in April, 2012 and final orders were

issued by the department on May 10, 2013 for laying the cable to the sub-station of the Appellant for energizing as well as awarding the contract

to M/s. Mamtha Constructions vide their letter dated Lr. NO.CGM(O&M)/ SE(O&M)/F.Tender/D.N. 384/13 dated 10.05.13. The cable laying

work is expected to commence before end of May, 2012. At present, Hyderabad Metropolitan Water Supply and Sewerage Board is supplying

Manjeera water to the residents of Hill Country. The Developer has made application for supply of additional quantum of water in February, 2013.

The gas piping infrastructure work will be completed by June 30, 2013. It is further stated in the affidavit that the provisional club house is

operational with indoor facilities and the permanent club house will be completed by end of July, 2013. With regard to the home loans taken by the

Respondents from the Appellant Banks/Financial Institutions, it is averred in the affidavit that the Developer has been meeting the Banks/Financial

Institutions periodically to help the Respondents to arrive at settlement and restricting the payment of loan amount. The Developer filed an

application before this Commission on 19.03.13 offering a compensation package to all the apartment owners in Hill Country based on fair rental

value. However, It has been submitted in the affidavit that the Developer is not in a financial position and cannot undertake to meet the financial

bank interest commitments of the respondents or make refunds. The IL&FS Group has infused Rs.425 crores to complete the project and the has

paid substantial income tax dues for the past period in order to negotiate with the Income Tax Department to lift the ban on registration of

conveyance deeds in the Hill County Project. It is further submitted that if the funds are diverted in making refunds and making interest payments

on behalf of the apartment owners, it would be at the cost of other customers of the Hill County Project as the project may not be completed due

to lack of funds. Under these circumstances, the Respondents be granted compensation at the rate of Rs.5/- per sq. ft. per month in proportion to

the amounts paid by them for the entire period of delay till the date of handing over possession except the 18 months period granted by the CLB to

the Developer to complete the project.

19. AS per Agreements of Sale, the construction of the flats/apartments was to be completed by the Developer in all the cases on or before 31st

December 2008. Due to Satyam Computer "s scam in 2009, the development of the project remained at standstill. The matter was referred to the

CLB which by order dated 13.01.11 induced the IL and FS Group to complete the project. IL&FS infused Rs.425 crores to complete the

project. As per statement made in the Affidavit filed by the Developer on 20.05.13 in compliance of our order dated 16.05.13 only four towers

out of the 11 towers have been completed. 5 towers, namely, Dalhousie, Shimla, Ooty, Munnar and Manali which were to be completed by the

end of June, 2013 are likely to be completed in the end of July, 2013. It has been decided by the Developer not to construct the remaining 2

towers, namely, Kodai and Coonoor. The work of providing basic amenities such as water, electricity, drainage, elevator, gas pipeline, club etc.

has yet to be completed by the Developer. Under these circumstances, the Respondents/Complainants are not interested to take possession of the

flats/apartments. This apart, most of the Respondents by issuing legal notices to the Developer cancelled the Agreements of Sale as they were not

willing to take possession of the flats. Since there was nothing on record to show the stage of construction and when the project would be

completed, the State Commission rightly directed the Developer to refund the deposited amount along with interest @ 12% p.a. from the

respective dates of deposit till payment together with compensation of Rs.1,00,000/- and costs of Rs.10,000/-.

20. AS per affidavit filed by the Developer, the Developer could not complete the project within the period of 18 months granted by the CLB.

Developer has got the period to complete the project extended by the CLB upto 30.06.13. Since the contradictory statements were being made

by the Ld. Counsel appearing for the Developer, we asked the Developer to file a fresh affidavit showing the stage of construction. On perusal of

the Affidavit, we are satisfied that the project cannot be completed till 30.06.13. As per Affidavit filed by the Developer, the Developer is not in a

position to complete the project upto 30.06.13. Developer has sought further time upto 31.07.13 to complete the project as the basic amenities

such as water, electricity, drainage, elevator, gas pipeline etc. have yet to be provided by them. Since the project is not complete as on the date,

we cannot direct the Respondents to take the possession of the flats. For the reasons stated above, we endorse the finding as well as direction

given to the Developer by the State Commission to refund the amount to the Respondents.

The Developer "s primary contention made before us is that the order of refund passed by the State Commission is unsustainable and more so in

the present circumstances when the construction is already completed. The affidavit filed by the Developer on 20.05.13 reveals that a substantial

part of the work, even according to the Developer, is still going on. The affidavit, on the face of it, does not inspire any confidence and rather

makes it abundantly clear that the apartments are not habitable. Section 455 of the Hyderabad Municipal Corporation Act, 1955 mandates that

after completion of the work in a building, the builder should intimate the Municipal Corporation in writing about such completion in the prescribed

form. The Authority after inspection, if it deems fit, would grant a completion certificate and no person shall be allowed to occupy a building until a

completion certificate is issued. This would be possible only if the entire work is complete. It is pertinent to mention here that Section 4 (4) of the

Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987 mandates that an apartment can be transferred by the

Developer only after obtaining a Completion Certificate and Certificate of fitness for occupation from the local authorities. In view of the

mandatory provisions of law, the claim of the Developer that the flats are ready and would be handed over to the Respondents by June, 2013 is

factually incorrect. Respondents are not interested in allotment of flats as the Banks/Financial Institutions are to recover the loans on the terms and

conditions of the original agreement with interest for the period of six years when there was no construction. If the Respondent are compelled to

take the flats, they would be in a state of debt to the Banks/Financial Institutions and would be required to pay interest/penal interest etc. Further,

Respondents are facing litigations initiated by the Banks under the provisions of the Securitization and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002; The Recovery of Debts due to the Banks and Financial Institutions Act, 1993 and The Negotiable

Instruments Act, 1881. Assuming that the Respondents take possession of their respective flats, the Banks would immediately initiate proceedings

for attachment of the flats towards recovery of the alleged dues. It is evident that in the event of the Respondent "s taking over the possession of

the flats, they would have to pay huge amounts to the Banks as per the penal provisions for default in the loan agreements, which cannot be repaid

by them even after selling the flat. If the Respondents take possession of the flats, they would be left with huge debts to the Banks and continue to

litigate in various other Courts for no fault of theirs.

21. THE 66 Respondents in the present batch of Appeals comprise less than 10% of the total flat purchasers in the Developer "s project. It would

not make any difference to the Developer, if the Respondents are refunded the amount paid by them. The Developer can sell the finished flats in

the open market at current rates and fetch more money than the amounts at which they agreed to sell the flats to the Respondents herein. This

apart, the earlier judgment on the same/similar facts in Complaint Case No.30/09 based on which the State Commission has allowed the present

complaints, was upheld by this Commission with slight modification. SLP filed by the Developer against the said order was dismissed by the

Supreme Court. The earlier judgment is a binding precedent which has been upheld upto Supreme Court. We respectfully follow the same.

Complaint No.30/09 was filed against the Developer on the same facts. The only intervening factor is the order dated 13.01.11 passed by the

CLB which according to us makes no difference as the Developer remains the same. By order dated 13.01.11, CLB had allotted the preferential

shares to the IL&FS by virtue of which it has controlling interest in the company. The liability of the Developer to the Respondents remains the

same. The judgment rendered by this Commission in First Appeal No. 189/10 in complaint No.30/09 which had been upheld by the Supreme

Court, is a binding precedent and as stated above we are bound by the same. Even as on today, the flats are not complete. Developer has not

obtained the Completion Certificate or Certificate of fitness for Occupation. Under these circumstances, Respondents cannot be ordered to take

possession of the unfinished flats without Completion Certificate and Certificate of fitness for Occupation issued by the local authorities. For the

reasons stated above, we do not find any merit in the Appeals filed by the Developer and dismiss the same with no order as to costs. FINDINGS

IN FIRST APPEAL NOS. 387 TO 400 OF 2012, 783/12, 29/13 AND 14 TO 25 OF 2013 FILED BY THE STATE BANK OF INDIA

AND ICICI BANK LTD.

22. WE need not recapitulate the facts again. Relevant clauses of the tripartite agreements wherein the Appellant, State Bank of India/ ICICI Bank

Ltd. was a party, are reproduced as under:-.

2. SBI shall make disbursement of the sanctioned loan by making payments to the Developer directly on behalf of the borrowers and payment(s)

made to the Developer shall be deemed to be payment(s) made to the borrowers and the borrowers shall in each case be liable for the amount of

the loan disbursed on his/her behalf to the Developer, as though the same has been disbursed directly to him/her. It is further agreed by the

borrower that SBI shall not be responsible or liable to ensure or ascertain the progress of the construction and mere demands for disbursement

would be sufficient for SBI to effect disbursement as aforesaid. However, SBI at its sole discretion, shall disburse the loan in suitable installments,

at the request of borrower/Developer or in suitable installments to be decided by SBI with reference to need or progress of construction, which

decision shall be final and binding on the borrower(s)/Developer. The borrower shall be responsible to follow up with SBI to make disbursement

on his/her behalf as per any agreement, payment schedule he/she may have with the Developer. Notwithstanding anything to the contrary contained

herein, SBI may in its sole discretion refuse to disburse the loan until; (a) Borrower(s) has/have paid his/her own contribution in full to the

Developer (the cost of the dwelling unit less the loan) and the progress and need of the construction justifies the disbursement requested. 6. That in

the event of cancellation of allotment to the borrower by the Developer for any reason whatsoever the Developer shall refund to SBI only forthwith

the entire amounts received from SBI within 60 days subject to clause No. 7 below. The balance if any after adjusting the dues, interest, costs and

other amounts recoverable by the SBI, shall be returned to the borrower by SBI. The Developer herein undertakes not to refund any amount, on

any account, under any circumstances to the borrower without the written consent of SBI. 7(a) Upon cancellation of the allotment of the schedule

property to the borrower for any reason, the Developer shall immediately intimate about the same in writing to SBI. Upon receipt of such

intimation, SBI shall notify the Developer all amounts due to it from the borrower. In such an event, the Developer shall forthwith pay SBI all

amounts received by it from SBI on behalf of the borrower within 60 days of receipt of such statement during which period, the Developer shall

pay interest to SBI, at the rate of interest on such amount shall be the same as agreed between the SBI and borrower in the loan agreement. (b)

Further, the Developer hereby agrees that it shall also pay all the remaining amounts due and payable to SBI from the borrower such as defaulted

payments, additional interest etc. after deducting reasonable expenses (as agreed by both Developer and SBI) incurred by the Developer from the

sale proceeds of the property

Pursuant to the tripartite agreements, the Appellant Bank entered into the loan agreements with the Respondents herein and sanctioned the home

loans. Thereafter, the Appellant Bank issued sanction letters. As per clause 13 (c) of the Loan Sanction Letter, the Appellant Bank was obligated

to release the loan amount to the Developer directly on the basis of verification of the stage and nature of the construction. In terms of Section 5 of

the Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987, the Appellant Bank was under an obligation not to

release more than 20% of the sale consideration amount as advance to the Developer before commencement of the construction. The relevant

Section 5 reads as under:-

A promoter who intends to transfer any apartment shall before, accepting any sum of money as advance payment or deposit, which shall not

exceed twenty percent of the price, enter into a written agreement of sale with the intending transferee and the same shall be registered as a

document compulsorily registerable under clause (b) of sub-section (1) of Section 17 of the Registration Act, 1908.

23. THE Appellant Bank disbursed the entire loan amount to the Developer even before the commencement of construction at the project site

contrary to the provisions of the Tripartite Agreement. The Appellant Bank could not have disbursed the loan amount without taking proper care

and caution to find out about the existence/start of construction of the flats for which loans were sanctioned. Due to the lack of supervision on part

of the Appellant Bank, the Developer diverted the funds of the project to the Satyam Computers. The Appellant Banks having acted contrary to

the terms of the tripartite agreement, its own sanctioned terms and provisions of Section 5 of the Andhra Pradesh Apartments (Promotion of

Construction and Ownership) Act, 1987 by disbursing the entire loan amount without any construction being made, cannot be absolved of their

responsibility.

24. THE tripartite agreements executed between the Bank, Developer and the Respondents contemplate that in the event of cancellation of

allotment of flat, the Developer was liable to refund the entire loan amount to the Appellant Banks within 60 days. Respondents terminated the

contracts by filing the complaints. The Appellant Banks in spite of having notice of termination of the contracts did not take any steps for recovery

of the loan amount from the Developer. The contention of the Bank that as per tripartite agreements the Bank was bound to review the progress of

the construction only to protect its own interest otherwise no duty was cast upon it does not hold water and appears to be a fallacious argument

and a lame excuse. The progress of construction and the manner in which the loan amount was to be disbursed by the Bank were inter-connected

issues and the Appellant Bank being the home loan banker who has lien over the flats should have acted cautiously and taken reasonable care to

ensure that its money is safe and secure. Moreover, the Appellant Bank cannot have any grievance against the order passed by the State

Commission directing it to recover the loan amount from the Developer as the interest of the Bank has been adequately protected by the State

Commission.

For the reasons stated above, we do not find any merit in the Appeals filed by the Banks and dismiss the same with no order as to costs. The

developer is directed to comply with the orders passed by the State Commission within a period of six weeks from today failing which the

Respondents would be at liberty to execute the decree. Registry is directed to refund the sum of Rs.35,000/- deposited by the Developer as

statutory deposit in each case along with accrued interest.