IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

RESERVED ON : 26.05.2026
PRONOUNCED ON : 06.08.2026

FIRST APPEAL NO. 1427 OF 2017

(Against the Order dated 24.4.2017 in CC No. 302/2011
of the State Consumer Disputes Redressal Commission, Maharashtra)
With
(IA No.16032/2023, for Substituted service)

1. Tejaswini Homes Pvt.Ltd.
Having Regd. Office at 1/A,
Shree Raj Villa, S.No.128
Bhusari Colony, Kothurd, Pune – 411038

2. Mr. Rameshwar S.Sambari
Director, M/s Tejaswini Homes Pvt.Ltd.
Having Regd. Office at 1/A,
Shree Raj Villa, S.No.128
Bhusari Colony, Kothurd, Pune – 411038
And at Niambari, College Street
Off. Gokhle Road North
Near Portuguese Church
Dadar (W), Mumbai – 400028

3. Mr. Ajay V.Patil
M/s Tejaswini Homes Pvt.Ltd.
Having address at C/o A.M.Associates
Room No.3, LMT Building Ground floor
Gokhale Road North,
Dadar (W), Mumbai – 400028 … Appellant

Versus

1. Mr. Mohan Baburao Divekar
R/o B/7, Nitya Rao Sukhadham Society
Dr. S.S.Rao Road, Sai Nagar,
Lalbag, Mumbai – 400012

2. Mrs. Manali Mohan Divekar
R/o B/7, Nitya Rao Sukhadham Society
Dr. S.S.Rao Road, Sai Nagar,
Lalbag, Mumbai – 4000120

3. Mr. Atul Y. Potnis
Director and Authority Rep. of
M/s Tejaswini Homes Pvt.Ltd.
4, Bole Road, Agar Bazar
Dadar (W), Mumbai - 400028 … Respondent

FIRST APPEAL NO. 1428 OF 2017

(Against the Order dated 24.4.2017 in CC No. 303/2011
of the State Consumer Disputes Redressal Commission, Maharashtra)
With
(IA No.16034/2023, for Substituted service)

1. Tejaswini Homes Pvt.Ltd.
Having Regd. Office at 1/A,
Shree Raj Villa, S.No.128
Bhusari Colony, Kothurd, Pune – 411038

2. Mr. Rameshwar S.Sambari
Director, M/s Tejaswini Homes Pvt.Ltd.
Having Regd. Office at 1/A,
Shree Raj Villa, S.No.128
Bhusari Colony, Kothurd, Pune – 411038
And at Niambari, College Street
Off. Gokhle Road North
Near Portuguese Church
Dadar (W), Mumbai – 400028

3. Mr. Ajay V.Patil
M/s Tejaswini Homes Pvt.Ltd.
Having address at C/o A.M.Associates
Room No.3, LMT Building Ground floor
Gokhale Road North,
Dadar (W), Mumbai – 400028 … Appellant

Versus

1. Mr. Sachin Sudhir Diwadkar
R/o Flat No.201, Shardda Niketan
Dadarkar Complex Satya
Nagar Borivali (W), Mumbai - 400092

2. Mr. Atul Y. Potnis
R/o 4, Norman House
S.K.Bole Road, Agar Bazar
Dadar (W), Mumbai - 400028 … Respondent

BEFORE :

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER
HON'BLE MR. SHASHI NANDKEOLYAR, MEMBER

FA No.1427 of 2017

For the Appellant	:	Mr. G.L.N.Murthy, Advocate
For the Respondent	:	Mr. Shantanu M.Adkar, Advocate for R-1 & 2 (VC) R-3 Ex-parte on 10.12.2024

FA No.1428 of 2017

For the Appellant	:	Mr. G.L.N.Murthy, Advocate
For the Respondent	:	Ms. Chetana Bhalla, Advocate for R-1 R-2 Ex-parte on 10.12.2024

ORDER

SHASHI NANDKEOLYAR

1. The Present First Appeal No. 1427 of 2017 and First Appeal No. 1428 of 2017 have been preferred by **Tejaswini Homes Pvt. Ltd. and its Directors/Authorized Representatives ["Appellant"]** under **Section 19 of the Consumer Protection Act, 1986 ["Act"]** assailing the **separate judgments and orders dated 24.04.2017 ["Impugned Orders"]** passed by the Maharashtra State Consumer Disputes Redressal Commission, Mumbai in Consumer Complaint No. 302 of 2011 and Consumer Complaint No. 303 of 2011 respectively.
2. Since both the aforesaid appeals arise out of separate impugned orders, yet involve substantially identical facts, common questions

of law, interconnected transactions, overlapping documentary evidence and common parties, the same were heard together and are being disposed of by this common order.

3. The only distinguishing feature between the two appeals pertains to the identity of the respective flat purchasers, the flat numbers allotted to them, the area of the flats and the consideration agreed between the parties. Save and except the aforesaid distinctions, the genesis of the dispute, the redevelopment project, the documentary evidence relied upon by the parties, the defense raised by the Appellants and the issues arising for determination remain substantially common.

4. First Appeal No. 1427 of 2017 arises out of Consumer Complaint No. 302 of 2011 instituted by **Mr. Mohan Baburao Divekar and another ["Respondent"]**, who claim entitlement in respect of **Flat No. 501 situated on the 5th Floor admeasuring approximately 850 sq. ft. saleable built-up area ["Subject Property"]** in the redevelopment project undertaken at Ganesh Galli, Lalbaug, Mumbai for an agreed consideration of Rs.51,50,000/-. The allegations, transactions and reliefs claimed in the said complaint arise from the same redevelopment scheme and involve substantially similar questions concerning the authority of the

persons who dealt with the complainants, receipt of consideration and the liability of the developer to honor the allotments.

5. First Appeal No. 1428 of 2017 arises out of Consumer Complaint No. 303 of 2011 instituted by **Mr. Sachin Sudhir Diwadkar ["Respondent"]**, who claims entitlement in respect of **Flat No. 503 situated on the 5th Floor admeasuring approximately 550 sq. ft. saleable built-up area ["Subject Property"]** in the same redevelopment project for an agreed consideration of Rs.21,50,000/-. Respondent No. 2 therein is Mr. Atul Y. Potnis, who is stated to have acted on behalf of the developer in relation to the transaction and whose role forms part of the controversy raised in the present proceedings.

6. Save and except the aforesaid distinctions regarding the identity of the complainants, the flat numbers, area of the flats and the consideration payable thereunder, the factual matrix, documentary evidence, defence raised by the Appellants, the issues arising for determination and the findings recorded by the State Commission remain substantially common.

7. In view of the aforesaid commonality and for the sake of convenience, brevity and to avoid repetition of facts and discussion, the brief facts are being primarily referred to from First Appeal No. 1428 of 2017 arising out of Consumer Complaint No.

303 of 2011 and the findings recorded herein shall, unless the context otherwise requires, govern both the connected appeals.

8. For the purpose of convenience, the parties shall be referred to in the same manner as they were arrayed before the State Commission. **Mr. Sachin Sudhir Diwadkar, Mr. Mohan Baburao Divekar and the co-complainant in Consumer Complaint No. 302 of 2011 shall collectively be referred to as the "Complainants"**, whereas **M/s Tejaswini Homes Pvt. Ltd., Mr. Rameshwar S. Sambari, Mr. Ajay V. Patil and the other contesting parties shall collectively be referred to as the "Opposite Parties" or the "Developer"**, as the context may require.

9. Before adverting to the factual matrix giving rise to the present proceedings, it would be apposite to briefly advert to the position occupied by **Mr. Atul Y. Potnis** in the transactions forming the subject matter of the present appeals. The role attributed to the said respondent assumes considerable significance since one of the principal controversies arising for determination pertains to the authority under which the agreements relied upon by the Complainants came to be executed and whether the acts undertaken by Mr. Potnis are capable of binding the developer company.

10. In First Appeal No. 1428 of 2017 arising out of Consumer 0, Mr. Atul Y. Potnis was arrayed as Respondent No. 2 before the State Commission, whereas in First Appeal No. 1427 of 2017 arising out of Consumer Complaint No. 302 of 2011, he was impleaded as Respondent No. 3. The documentary record relied upon by the parties indicates that Mr. Potnis was the individual through whom the transactions concerning the subject flats were allegedly negotiated and the agreements relied upon by the Complainants came to be executed.

11. The Complainants consistently maintain that Mr. Potnis acted for and on behalf of the developer company and its functionaries and that all representations made by him concerning the allotment of the subject flats were within the scope of the authority vested in him by the Opposite Parties. According to the Complainants, the agreements, assurances and transactions undertaken through Mr. Potnis formed an integral part of the redevelopment project being implemented by Tejaswini Homes Pvt. Ltd., and consequently the developer cannot be permitted to dissociate itself from the acts of a person through whom it conducted its dealings with prospective purchasers.

12. The Opposite Parties, however, have adopted a diametrically opposite stand. Their case, as discernible from the memorandum

of appeals, is that the agreements relied upon by the Complainants were not executed by Tejaswini Homes Pvt. Ltd. through any duly authorised representative and that Mr. Potnis merely purported to act on behalf of the company without possessing the requisite authority to bind it. It is further their case that the consideration allegedly paid by the Complainants was not received by the company and that any transaction entered into by Mr. Potnis cannot, by itself, create a legally enforceable contractual relationship against the developer.

13. Thus, the position of Mr. Potnis lies at the very heart of the dispute. While the Complainants seek to treat him as a representative and agent of the developer whose acts are attributable to the company, the Opposite Parties seek to portray him as an independent individual acting without authority and beyond the corporate framework of Tejaswini Homes Pvt. Ltd. The controversy concerning the existence of a binding contractual relationship, the authority of the signatory and the consequent liability of the developer is therefore inextricably linked with the status and role of Mr. Potnis in the transactions in question.

14. The record further reveals that despite being impleaded as a party respondent in the complaints, Mr. Potnis did not effectively contest the proceedings before the State Commission. The appeal

records indicate that repeated attempts were made to effect service upon him and, eventually, service had to be effected through substituted mode by way of newspaper publication. Notwithstanding such service, he failed to enter appearance and contest the complaints.

15. Consequently, by order dated 02.04.2014, the State Commission proceeded ex parte against Mr. Potnis. Significantly, therefore, the person through whom the agreements are alleged to have been executed neither entered the witness box nor placed any material on record clarifying the source of his authority, the nature of his association with the developer company or the circumstances in which the transactions were undertaken. The absence of any explanation from Mr. Potnis constitutes an important factual circumstance which necessarily bears upon the rival contentions advanced by the parties regarding authority, representation and privity of contract.

16. It is in the aforesaid backdrop that the factual narrative, the findings recorded by the State Commission, and the rival submissions advanced before this Commission are required to be appreciated.

FACTUAL MATIRX:

17. The material available on record reveals that the genesis of the present dispute lies in a redevelopment project undertaken by the Opposite Parties in respect of property bearing Plot No. 52, Survey No. 2569, CTS No. 53/47 situated at Ganesh Galli, Lalbaug, Mumbai, falling within the Parel-Sewri Division. The said project was conceived as a redevelopment scheme involving reconstruction of the existing structures standing upon the property and development of residential premises for both existing occupants and prospective purchasers.

18. The Opposite Party No.1, namely Tejaswini Homes Pvt. Ltd., projected itself as the developer entrusted with the redevelopment activities and represented that it possessed the requisite rights, authority and capacity to undertake construction and allot residential premises in the proposed redevelopment project. The remaining Opposite Parties were associated with the affairs of the developer company and were stated to be actively involved in the execution and implementation of the project.

19. It is the case of the Complainants that during the course of development and marketing of the project, representations were made by the Opposite Parties regarding availability of residential flats for sale. Acting upon such representations and being induced by the assurances extended by the developer and its

representatives, the respective Complainants agreed to purchase residential premises in the redevelopment project for valuable consideration.

20. In so far as Consumer Complaint No. 303 of 2011, from which First Appeal No. 1428 of 2017 arises, is concerned, the Complainant Sachin Sudhir Diwadkar claims to have entered into an Agreement dated 29.07.2005 in respect of Flat No. 503 situated on the 5th Floor admeasuring approximately 550 sq. ft. saleable built-up area for a total consideration of Rs.21,50,000/-. The Complainant asserts that the agreement was executed on behalf of the developer and that various payments were thereafter made towards the agreed consideration in terms of the arrangement arrived at between the parties.

21. Similarly, in Consumer Complaint No. 302 of 2011, from which First Appeal No. 1427 of 2017 arises, the Complainant Mohan Baburao Divekar claims entitlement in respect of Flat No. 501 situated on the 5th Floor admeasuring approximately 850 sq. ft. saleable built-up area for a total consideration of Rs.51,50,000/-. According to the said Complainant, substantial payments were also made pursuant to the transaction, and the Opposite Parties repeatedly acknowledged the subsistence of the allotment and

their obligation to hand over possession upon completion of the project.

22. The record indicates that the transactions in question were entered into during the developmental phase of the project when the prospective purchasers were led to believe that upon completion of construction, they would be placed in possession of the respective premises agreed to be allotted to them. The Complainants contend that relying upon the assurances held out by the developer and its representatives, they altered their position, parted with substantial sums of money and awaited completion of the redevelopment project.

23. However, as time progressed, the project failed to culminate in delivery of possession to the Complainants. Despite repeated approaches, personal meetings, correspondence and demands made by the Complainants, the promised premises were not handed over. The delay gradually transformed into a complete failure on the part of the developer to honour the commitments allegedly undertaken under the agreements.

24. The dispute was further compounded by the stand subsequently adopted by the Opposite Parties. While the existence of the redevelopment project was not in dispute, the Opposite Parties sought to distance themselves from the

contractual obligations asserted by the Complainants. It was contended that the agreements relied upon by the Complainants were not executed by the company in accordance with law and that the persons through whom the transactions had allegedly been undertaken lacked authority to bind the developer company.

25. The principal defense of the Opposite Parties appears to have been founded upon the plea that the agreements in question were executed by individuals in their personal capacity and not by the company itself. The Opposite Parties further contended that no consideration was received by Tejaswini Homes Pvt. Ltd. and that certain payments allegedly relied upon by the Complainants were made to private individuals and not to the developer company. Consequently, according to the Opposite Parties, no enforceable contractual liability could be fastened upon them.

26. The Complainants, on the other hand, consistently maintained that the transactions had been undertaken in connection with the redevelopment project of the developer company itself and that the persons through whom the agreements were executed were acting under the authority, control and knowledge of the Opposite Parties. It was contended that after having induced purchasers to part with valuable consideration and after having held out representations regarding allotment of flats,

the developer could not subsequently evade liability by disputing the authority of its own representatives.

27. The material placed on record further suggests that disputes also arose regarding the receipt and utilisation of consideration allegedly paid by the Complainants. While the Complainants relied upon documentary material indicating payments made pursuant to the transactions, the Opposite Parties disputed the legal effect of such payments and questioned whether the same could be treated as payments made to the company. The controversy regarding authority, receipt of consideration and enforceability of the agreements thus came to constitute the central dispute between the parties.

28. Faced with the continued failure of the Opposite Parties to deliver possession of the promised premises and alleging persistent deficiency in service, unfair trade practice and breach of contractual obligations, the Complainants eventually approached the Maharashtra State Consumer Disputes Redressal Commission by instituting Consumer Complaint Nos. 302 of 2011 and 303 of 2011 seeking appropriate directions for allotment of equivalent accommodation, compensation for mental agony and harassment and other consequential reliefs.

29. The proceedings before the State Commission reveal that notices were issued to the Opposite Parties and the complaints were admitted for adjudication. Although the Opposite Parties entered appearance through counsel, their written arguments ultimately came not to be taken on record owing to expiry of the statutory period prescribed under the Consumer Protection Act for filing the same. The State Commission accordingly declined further extension of time while permitting the Opposite Parties to participate in the proceedings through affidavits of evidence and written submissions.

30. The complaints thereafter proceeded to trial. The parties produced documentary evidence including agreements, correspondence, payment documents, affidavits of evidence and other supporting material. The State Commission was consequently called upon to adjudicate not merely the issue of possession but also the broader questions concerning the validity and enforceability of the transactions, the authority of the persons who executed the agreements and the liability of the developer company arising therefrom.

PROCEEDINGS BEFORE AND FINDINGS OF THE STATE COMMISSION

31. Upon institution of Consumer Complaint Nos. 302 of 2011 and 303 of 2011, notices came to be issued to the Opposite Parties. The record reveals that while the Opposite Parties entered appearance before the State Commission, their written version ultimately did not come to be taken on record on account of expiry of the statutory period prescribed for filing the same. The State Commission, however, permitted the Opposite Parties to participate in the proceedings and place their evidence and written submissions on record.

32. The State Commission thereafter proceeded to examine the documentary material produced by the parties, including the agreements relied upon by the Complainants, the payment documents, the correspondence exchanged between the parties and the material placed on record by the Opposite Parties in support of their defense.

33. One of the principal objections raised by the Opposite Parties before the State Commission pertained to the alleged absence of any contractual relationship between the Complainants and Tejaswini Homes Pvt. Ltd. The Opposite Parties sought to contend that the transactions relied upon by the Complainants were attributable to Mr. Atul Y. Potnis and not to the developer

company. The State Commission, however, was not persuaded to accept the said defense.

34. Upon appreciation of the material available on record, the State Commission found that the transactions relied upon by the Complainants related to flats forming part of the redevelopment project admittedly undertaken by the Opposite Parties and that the documentary evidence produced by the Complainants established a sufficient nexus between the transactions in question and the redevelopment activities being carried out by the developer.

35. The State Commission further took note of the fact that despite the passage of considerable time, the Complainants had neither been placed in possession of the flats agreed to be allotted to them nor had any satisfactory explanation been furnished for the failure to honour the commitments held out at the time of entering into the transactions. The prolonged non-delivery of the premises was held to constitute a clear instance of deficiency in service.

36. The State Commission was also of the view that the Complainants could not be deprived of the benefits flowing from the transactions merely because disputes had subsequently arisen regarding the internal affairs of the developer or the authority of the persons through whom the transactions had been undertaken. The Commission observed that the flats in question formed part of the

redevelopment project and the Complainants had acquired enforceable rights in relation thereto.

37. Having regard to the nature of the dispute and the reliefs sought by the Complainants, the State Commission considered it appropriate not to restrict the relief merely to refund of amounts. Instead, it proceeded on the premise that the Complainants were entitled to accommodation equivalent to that which had originally been agreed between the parties.

38. Consequently, by separate orders dated 24.04.2017 passed in Consumer Complaint Nos. 302 of 2011 and 303 of 2011, the State Commission directed the Opposite Parties to provide alternate residential premises corresponding to the area agreed under the respective transactions. In Consumer Complaint No. 303 of 2011, the Opposite Parties were directed to provide a flat admeasuring approximately 550 sq. ft., whereas in Consumer Complaint No. 302 of 2011, they were directed to provide a flat admeasuring approximately 850 sq. ft., either in the same building or in another suitable building situated within the Ganesh Galli locality.

39. The State Commission further directed the Opposite Parties to accept the balance consideration, if any, payable under the respective transactions and awarded compensation quantified at

Rs.2,00,000/- together with litigation costs of Rs.10,000/- in favour of each set of Complainants. The operative portion of the said impugned order reads as under:

> *"Opponent Nos. 1 to 4 are directed to hand over vacant and peaceful possession of any other flat admeasuring 850 sq.ft. saleable built-up area in the same building or any other building in the same area- of Ganesh Galli, Lalbaug, Mumbai-400 012 with registered agreement to the complainants within two months from the date of order by obtaining rest of sale of consideration from the complainants.*
>
> *Opponent Nos.1to4 are hereby directed to pay compensation of Rs.2,00,000/- (Rupees Two Lakhs only) and costs of Rs. 10,000/-(Rupees Ten Thousand only) to the complainants.*
>
> *Copies of the order be furnished to the parties."*

40. Aggrieved by the aforesaid findings and directions, the Opposite Parties have preferred the present appeals questioning both the findings on liability and the consequential relief granted by the State Commission.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

41. Learned counsel appearing on behalf of the Appellants assailed the impugned orders passed by the State Commission and submitted that the findings recorded therein suffer from patent errors of fact and law and have resulted in fastening liability upon

persons against whom no legally enforceable cause of action was ever established.

42. At the outset, learned counsel submitted that the State Commission failed to appreciate the foundational objection raised by the Appellants that there existed no privity of contract whatsoever between the Complainants and Appellant No.1 Company. According to the Appellants, the entire case of the Complainants was founded upon documents allegedly executed by Mr. Atul Y. Potnis in his individual capacity and not by Tejaswini Homes Pvt. Ltd. through any duly authorised representative. It was contended that the State Commission erroneously proceeded on the assumption that every act attributed to Mr. Potnis automatically bound the developer company without first determining whether he possessed authority in law to create contractual obligations on behalf of the company.

43. Learned counsel further submitted that the State Commission failed to appreciate that the consideration allegedly paid by the Complainants was not paid to the Appellant Company but was admittedly paid in the personal name of Mr. Atul Y. Potnis. It was argued that no material was produced demonstrating that any portion of the alleged consideration was ever received by or credited to the accounts of Tejaswini Homes Pvt. Ltd.

Consequently, the essential ingredients necessary to establish a consumer-service provider relationship between the Complainants and the Appellant Company remained wholly unproved.

44. It was further contended that the State Commission overlooked the documentary material produced by the Appellants, particularly Form No. 32, which according to the Appellants demonstrated that Mr. Atul Y. Potnis had ceased to be associated with the affairs of the company and was not holding the position attributed to him by the Complainants at the relevant time. Learned counsel submitted that once the Appellants had produced corporate records disputing the authority of Mr. Potnis, the burden shifted upon the Complainants to establish the source and extent of his authority. In the absence of such proof, the company could not have been saddled with liability arising from his alleged acts.

45. Learned counsel next submitted that the State Commission failed to subject the documents relied upon by the Complainants to proper scrutiny. It was argued that the alleged agreement for sale did not reflect the payments claimed to have been made prior thereto and suffered from material inconsistencies. Similarly, the allotment letters relied upon by the Complainants were alleged to be incomplete and did not contain essential particulars relating to the flat number, consideration amount or other material terms

ordinarily expected in a genuine allotment document. According to the Appellants, these discrepancies cast serious doubt upon the authenticity and evidentiary value of the documents relied upon by the Complainants.

46. It was further argued that the State Commission failed to appreciate that the relief granted effectively imposed the obligations of Mr. Potnis upon the Appellant Company without there being any cogent evidence demonstrating that the company had authorized, ratified or adopted the transactions in question. The Appellants submitted that even assuming the Complainants had a grievance against Mr. Potnis, such grievance could not automatically be converted into a claim against the developer company in the absence of proof establishing a legal nexus between the two.

47. Learned counsel also submitted that the State Commission failed to properly evaluate the defense evidence produced by the Appellants and proceeded to return findings adverse to them despite the absence of any material demonstrating direct dealings between the Complainants and the Appellant Company. It was argued that the impugned orders proceed more on assumptions than on legally admissible evidence and consequently suffer from

non-consideration of material facts and documents placed on record.

48. A substantial challenge was also directed against the procedural course adopted before the State Commission. Learned counsel submitted that although the Appellants had entered appearance and participated in the proceedings, they were denied an effective opportunity to place their written version on record. According to the Appellants, the closure of their right to file a written statement materially prejudiced their defense and deprived them of an adequate opportunity to contest the allegations levelled by the Complainants. It was submitted that the impugned orders were therefore liable to be set aside on the ground that the dispute had not been adjudicated after a full and complete consideration of the Appellants' defence.

49. Learned counsel submitted that the cumulative effect of the aforesaid circumstances demonstrates that the findings recorded by the State Commission are unsustainable. According to the Appellants, the evidence on record, even if taken at its highest, does not establish the existence of a legally enforceable contractual relationship between the Complainants and Tejaswini Homes Pvt. Ltd., nor does it justify the directions issued against

the Appellants for allotment of alternate flats, payment of compensation and costs.

50. On the strength of the aforesaid submissions, learned counsel prayed that the impugned orders dated 24.04.2017 be set aside. In the alternative, it was submitted that the matters be remanded to the State Commission for fresh adjudication after affording the Appellants an opportunity to file their written version and fully contest the complaints on merits.

SUBMISSIONS ON BEHALF OF RESPONDENTS:

51. Learned counsel appearing on behalf of the Respondents/Complainants supported the impugned orders in their entirety and submitted that the same are founded upon a proper appreciation of the documentary evidence, the conduct of the parties and the surrounding circumstances governing the transactions in question. It was contended that no jurisdictional error, perversity or illegality has been demonstrated against warranting interference by this Commission in exercise of its appellate jurisdiction.

52. Learned counsel submitted that the principal defense raised by the Appellants regarding absence of privity of contract is wholly misconceived and contrary to the record. According to the Respondents, the subject flats formed part of the redevelopment

project admittedly undertaken by Tejaswini Homes Pvt. Ltd., and the transactions relied upon by the Complainants were intrinsically connected with the said project. It was submitted that the Appellants cannot simultaneously claim ownership and control over the project and yet disown the transactions undertaken in relation to flats forming part thereof.

53. Learned counsel argued that the Appellants have sought to distance themselves from Mr. Atul Y. Potnis only after disputes arose between the parties. It was submitted that throughout the course of the transactions, Mr. Potnis represented himself acting on behalf of the developer and dealt with prospective purchasers in connection with the redevelopment project. The Respondents contend that the transactions were not private arrangements concerning independent property owned by Mr. Potnis but related exclusively to flats forming part of the development undertaken by the Appellant Company. Consequently, the acts of Mr. Potnis cannot be artificially segregated from the obligations of the developer.

54. It was further submitted that the Appellants have failed to furnish any satisfactory explanation as to how a third party having no connection with the company could negotiate, execute documents and collect consideration in relation to flats situated

within the redevelopment project. According to the Respondents, the conduct of the parties and the attendant circumstances unmistakably establish that Mr. Potnis was acting in connection with the affairs of the project and that the Appellants cannot evade liability merely by disputing his authority after having permitted him to hold himself out as a representative of the developer.

55. Learned counsel further submitted that the challenge regarding receipt of consideration is equally devoid of merit. It was argued that the question is not merely whether the payments were deposited into a particular bank account but whether the monies were paid pursuant to transactions concerning flats in the Appellants' project. According to the Respondents, once the payments were made in relation to allotments emanating from the redevelopment project, the developer cannot escape responsibility by relying upon internal arrangements or disputes concerning the manner in which the monies were received.

56. Referring to the documentary evidence placed on record, learned counsel submitted that the agreements, allotment documents, correspondence and other contemporaneous records clearly establish the existence of concluded transactions and the legitimate expectation of the Complainants that possession of the subject flats would be delivered upon completion of the project. It

was argued that the State Commission correctly appreciated the cumulative effect of the documentary material and rightly concluded that the Complainants had acquired enforceable rights in respect of the subject premises.

57. Learned counsel submitted that the Appellants' challenge to the authority of Mr. Potnis is further weakened by the fact that the said respondent never entered appearance before the State Commission to support the defense now sought to be advanced. Despite being impleaded as a party and despite service of notice through substituted means, Mr. Potnis chose not to contest the proceedings and was ultimately proceeded against ex parte. According to the Respondents, the absence of any affidavit or testimony from the very person through whom the transactions were undertaken materially undermines the Appellants' attempt to deny responsibility.

58. Learned counsel further contended that the State Commission was fully justified in drawing adverse inference from the conduct of the Appellants and in rejecting their attempts to disassociate themselves from the transactions. It was submitted that the Consumer Protection Act is intended to provide substantive relief against unfair conduct and deficiency in service and that the Appellants cannot be permitted to defeat legitimate

consumer claims by resorting to technical objections regarding internal corporate arrangements.

59. In response to the grievance concerning non-acceptance of the written version, learned counsel submitted that the State Commission acted strictly in accordance with the statutory framework prevailing at the relevant time. It was argued that despite closure of the written statement, the Appellants were afforded ample opportunity to participate in the proceedings, lead evidence, produce documents and address arguments. Consequently, no prejudice whatsoever can be said to have been caused to the Appellants.

60. Learned counsel further submitted that the findings recorded by the State Commission are findings of fact based upon appreciation of evidence and do not warrant interference merely because another view may be possible. According to the Respondents, the Appellants have failed to demonstrate any manifest error in the appreciation of evidence or any circumstance justifying appellate intervention.

61. It was contended that the directions issued by the State Commission for allotment of alternate flats constitute the only equitable and effective relief in the facts of the present case. The Respondents submitted that after having waited for several years

and after having parted with valuable consideration, they cannot be relegated to a position where the developer is permitted to avoid its obligations by raising disputes concerning its own representatives. The relief granted by the State Commission was therefore both just and necessary to secure the ends of justice.

62. Learned counsel lastly submitted that the appeals are devoid of merit and have been preferred solely to delay compliance with the lawful directions issued by the State Commission. It was accordingly prayed that the impugned orders dated 24.04.2017 be affirmed and the appeals be dismissed with costs.

ANALYSIS:

ISSUES BEFORE THIS FORUM:

63. Having bestowed our thoughtful consideration to the pleadings, the documentary evidence brought on record, the findings recorded by the State Commission and the rival submissions advanced on behalf of the parties, the following issues arise for determination before this Commission:

(i) Whether the transactions relied upon by the Complainants in respect of Flat No. 503 admeasuring approximately 550 sq. ft. in Consumer Complaint No. 303 of 2011 and Flat No. 501 admeasuring approximately 850 sq. ft. in Consumer Complaint

No. 302 of 2011 are legally enforceable transactions capable of binding the Appellant Company?

(ii) Whether Mr. Atul Y. Potnis was acting on behalf of, or in a representative capacity for, the Appellant Company in relation to the transactions forming the subject matter of the present proceedings and, if so, whether the Appellants can avoid liability by disputing his authority at a subsequent stage?

(iii) Whether the Complainants have established payment of consideration and acquisition of enforceable rights in respect of the subject flats forming part of the redevelopment project undertaken by the Appellants?

(iv) Whether the State Commission was justified in concluding that the conduct of the Appellants amounted to deficiency in service and unfair trade practice within the meaning of the Consumer Protection Act, 1986?

(v) Whether the Appellants have established that the procedure adopted by the State Commission, particularly in relation to the non-acceptance of their written version, occasioned such prejudice as would warrant interference with the impugned orders?

(vi) Whether the directions issued by the State Commission requiring allotment of alternate flats of equivalent area together

with compensation and litigation costs call for interference, modification or affirmation in exercise of the appellate jurisdiction of this Commission?

ANALYSIS AND FINDINGS OF THIS COMMISSION:

64. Having given our anxious consideration to the rival submissions advanced by the parties and having carefully perused the entire record, we are of the considered opinion that the findings recorded by the State Commission do not suffer from any infirmity warranting interference in exercise of appellate jurisdiction.

65. At the very outset, it must be noticed that the controversy in both appeals is remarkably narrow. The existence of the redevelopment project undertaken by Appellant No.1 at Ganesh Galli, Lalbaug, Mumbai is not in dispute. The Appellants have also not disputed that the subject flats form part of the said redevelopment project. The real controversy centres around the authority of Mr. Atul Y. Potnis, the validity of the transactions entered into through him and the consequent liability of the Appellants.

66. In so far as First Appeal No. 1428 of 2017 is concerned, the record demonstrates that the complainant booked Flat No.503 situated on the 5th Floor of Tejaswini Heights/Residency admeasuring approximately 550 sq. ft. for a total consideration of

Rs.21,50,000/-. The State Commission recorded that the complainant had paid Rs.1,75,000/- vide receipt dated 24.06.2005, Rs.2,25,000/- vide receipt dated 05.07.2005, Rs.1,00,000/- on 23.07.2005 and a further amount of Rs.1,00,000/- on 02.08.2005. The complainant had also paid Rs.1,47,850/- towards stamp duty and thereafter an agreement for sale came to be executed in his favour.

67. Similarly, in First Appeal No. 1427 of 2017, the State Commission found that the complainants had booked Flat No.501 situated on the 5th Floor admeasuring approximately 850 sq. ft. for a total consideration of Rs.51,50,000/-. The complainants had paid Rs.2,00,000/- vide receipt dated 11.06.2007, Rs.10,00,000/- vide receipt dated 14.06.2007, followed by Rs.4,00,000/- on 26.06.2007 and Rs.3,00,000/- on 02.12.2007. The complainants had further paid Rs.1,62,000/- towards stamp duty. An agreement dated 15.06.2007 was initially executed and thereafter a second agreement dated 26.12.2007 came to be executed in favour of the complainants.

68. The State Commission meticulously examined the receipts, agreements and contemporaneous documents relied upon by the parties. Upon such examination, it recorded a categorical finding that all receipts acknowledging payment as well as the agreements

in question had been executed by Mr. Atul Y. Potnis expressly describing himself as an authorised Director of Opposite Party No.1 Company. The agreements themselves contained recitals to that effect.

69. The principal defence raised by the Appellants was that Mr. Potnis had ceased to be associated with the company with effect from 01.09.2007 and that a public notice regarding such cessation was subsequently published on 15.12.2009. Reliance was placed upon Form No.32 and allied corporate records to contend that any acts undertaken by Mr. Potnis could not bind the company and that the complainants were fully aware of his removal.

70. The State Commission, however, rightly rejected the aforesaid contention. In the case of the complainant in First Appeal No. 1428 of 2017, the agreement itself was executed when Mr. Potnis admittedly functioned as Director and was clothed with authority to execute documents relating to sale of flats. Likewise, in First Appeal No. 1427 of 2017, the initial agreement dated 15.06.2007 was executed at a point of time when Mr. Potnis admittedly held office and acted on behalf of the company. Even the subsequent agreement dated 26.12.2007 was executed in continuation of the transaction already entered into between the parties.

71. We find ourselves in complete agreement with the State Commission that the dispute sought to be projected by the Appellants is essentially an inter se dispute between the company and Mr. Potnis. The purchasers had no role whatsoever in the internal management of the company or in disputes concerning its Board of Directors. Once the company, acting through a person held out as its authorised Director, accepted monies, executed receipts and entered into agreements concerning flats forming part of its redevelopment project, innocent purchasers cannot subsequently be non-suited on the basis of internal corporate disputes.

72. The reasoning adopted by the State Commission is particularly compelling because the documentary evidence overwhelmingly demonstrates that the monies were not received by Mr. Potnis in his personal capacity. Every receipt relied upon by the complainants records receipt by him as authorised Director of Opposite Party No.1. The agreements were likewise executed by him on behalf of the company. In such circumstances, the Appellants cannot now contend that the entire transaction was personal to Mr. Potnis and unconnected with the developer.

73. Equally significant is the finding that the complainants could not reasonably be attributed knowledge of the alleged cessation of

Mr. Potnis from the Board merely because such fact was subsequently notified in the year 2009. The transactions had already been entered into and rights had already accrued in favour of the complainants. The State Commission rightly observed that the complainants cannot be made to suffer for events occurring within the internal affairs of the company after the transactions had already been concluded.

74. The submission regarding absence of privity of contract also merits rejection. The receipts, agreements and attendant circumstances clearly establish that the transactions were entered into in relation to flats forming part of the Appellants' redevelopment project. The documents were executed on behalf of the company and the consideration was received pursuant to such transactions. The relationship of consumer and service provider therefore stood sufficiently established. We therefore affirm the conclusion of the State Commission that the complainants successfully proved their status as consumers of Opposite Parties Nos.1 to 4.

75. The record further establishes that despite accepting consideration and executing the relevant documentation, the Appellants failed to deliver possession of the flats to the complainants. No convincing explanation has been furnished for

such prolonged failure. The State Commission therefore correctly concluded that the conduct of the Appellants amounted to deficiency in service within the meaning of the Consumer Protection Act, 1986.

76. We are also unable to accept the submission that the State Commission erred in granting substantive relief. Consumer jurisprudence has consistently recognised that where a purchaser seeks the promised residential accommodation and such relief remains capable of implementation, the consumer forum is justified in directing delivery of the agreed premises or equivalent accommodation. In the facts of the present case, the State Commission adopted a balanced approach by directing delivery of the agreed flats and, in the alternative, flats of equivalent area in the same locality.

77. In First Appeal No. 1428 of 2017, the State Commission directed delivery of Flat No.503 admeasuring 550 sq. ft. or, at the option of the complainant, any other flat admeasuring 550 sq. ft. in the same locality. In First Appeal No. 1427 of 2017, similar directions were issued in respect of Flat No.501 admeasuring 850 sq. ft. or an equivalent alternate flat. Such directions are neither excessive nor arbitrary and, on the contrary, seek to secure the

very benefit for which the complainants had parted with substantial sums of money.

78. We further find no reason to interfere with the award of compensation and litigation costs. The complainants have remained deprived of the promised accommodation for several years and have been compelled to undertake prolonged litigation to enforce their rights. The compensation awarded by the State Commission is therefore just, reasonable and commensurate with the hardship suffered by them.

79. Upon an independent evaluation of the entire record, we are satisfied that the State Commission correctly appreciated the evidence, correctly applied the governing principles of law and arrived at conclusions which are both legally sustainable and factually justified. The Appellants have failed to demonstrate any perversity, jurisdictional error or material illegality warranting interference in appellate proceedings.

80. Accordingly, all the issues framed for determination are answered against the Appellants and in favour of the Respondents. The impugned orders dated 24.04.2017 passed by the Maharashtra State Consumer Disputes Redressal Commission in Consumer Complaint Nos.302 of 2011 and 303 of 2011 deserve

to be affirmed in toto and the present First Appeals are liable to be dismissed.

81. All pending Applications, if any, stand disposed off.

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(DR. INDER JIT SINGH)
PRESIDING MEMBER

……..……..……..
(SHASHI NANDKEOLYAR)
MEMBER

Sonia/
Kaustubh/