CASE NO.:
Appeal (civil) 7960 of 2004

PETITIONER:
Saurabh Prakash

RESPONDENT:
DLF Universal Ltd.

DATE OF JUDGMENT: 24/11/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
WITH
CIVIL APPEAL NO. 5179 OF 2006
[Arising out of SLP (C) No. 26795 of 2004]
CIVIL APPEAL NO.5180 OF 2006
[Arising out of SLP (C) No. 3788 of 2005]
S.B. SINHA, J :

Leave granted in the SLPs.

Extent of jurisdiction of the Monopolies and Restrictive Trade Practices Commission (for short "the Commission") is the question involved in these appeals, although they arose under different fact situations.

We would notice the fact involved in both the appeals separately.

In Civil Appeal arising out of SLP (C) No. 26795 of 2004, Sunil Gulati, Respondent herein entered into an agreement with Respondent No. 1 (DLF) for purchasing a flat in a building known as Windsor Court, DLF City, Gurgaon and made payment of a sum equivalent to 10% of the agreed price as earnest money at the first instance. The balance payment was to be made in instalments. Clause 17 of the Agreement entitled the allottee to cancel the allotment at any time and take refund of the amount paid by him without interest, but the earnest money was liable to be forfeited in the following terms:

"17. In case the allotment is got cancelled by the Allottee himself, he shall be entitled to the refund of the amount paid by him, after deducting the earnest money, but without payment of any interest on the balance amount, paid by him."

Clause 8 of the said Agreement reads as under:

"8. That the time of payment of installments as stated in schedule of payments (Annexure II) and applicable stamp duty, registration fee, maintenance charges and other charges payable under this agreement as and when demanded is the essence of this Agreement. It shall be incumbent on the Apartment Allottee to comply with the terms of payment and/ or other terms and conditions of sale, failing which he shall forfeit to the Company the entire amount of earnest money and the Agreement of sale shall stand cancelled and the Apartment Allottee shall have no right, title, interest or claim of whatsoever nature on the

said premises. The company shall thereafter be free to resell and deal with the said premises in any manner, whatsoever, at its sole discretion. The amount(s), if any paid over and above the earnest money shall however be refunded to the Apartment Allottee by the Company without any interest or any compensation of whatsoever nature."

Respondent paid some instalments but allegedly was unable to pay the same from the month of June, 1996. One of his cheques bounced which fact was intimated to him by Appellant by a letter dated 7th January, 1998.

He entered into an Apartment Buyers Agreement on 8.4.1996. At his request a 2 and = year payment plan was converted into a 7 year payment plan in May, 1996. Respondent did not pay the instalment in due time wherefor allegedly reminders were sent.

A demand letter was also sent to him. Respondent on or about 3.8.1998 showed his inability to make any payment and informed Appellant that he was in desparate need of funds so as enable him to make a new beginning in India, requested Appellant to promptly make payment of the amount with interest at the rate of 24% per annum. A reminder was sent by him on 10th September, 1998. On 3.11.1998, he suggested that he may be allotted some other smaller property. The said letter reads as under:

"The Chairman,
DLF Universal Limited
New Delhi.

Dear Sir,

Re: SO8B Windsor Court

I am writing this letter with the hope that due regard and consideration will be extended to me by your goodselves.

I was working in Bangkok and due to the Asian fallout I have lost my job and I am back home trying to settle my family and myself. I have been paying my instalments against the above stated property, but now due to my present circumstances, I will not be able to pay any further instalments. Till date I have already paid a sum of Rs. 24,96,685/- towards the said property.

Since I do not have a house, my immediate need is to settle down my family. I have been talking to your sales people and they have suggested me to look for some other smaller property where I could swap the amount paid against the new property. On getting a list of the limited available options, I have chosen property No. L19/97 in Phase \026 II (a town house unit) for which an application form has already been handed over by me to your sales department. The cost of the property is Rs. 24,85,428/- plus Rs. 2,60,000/- towards registration.

The figure works out as under:

Total amount paid: Rs. 24,96,685/- + parking charges
Cost of townhouse: Rs. 23,45,428/-

The amount suits my budget and the balance amount should be refunded to me so that I can get the interiors done and settle down my family.

I have been told that the earnest money of Rs. 602,221/- will not be adjusted against the new property and will be forfeited. Since I am swapping from one property to another I don't see why this amount would not be adjusted against the cost of the townhouse, this townhouse is a backside unit and is lying unsold since it was constructed. The drawback of a backside unit is evident by itself. To add to this, my dream of property an 'A' class unit in Windsor Court is not coming true as I am now settling down for a lesser grade property. If I am told that my earnest money will be forfeited, inspite of the fact that I am swapping from one property to another, I will not be able to pay any further difference and in that case would request you to refund my money of Rs. 18,94,464/- immediately so that I can go somewhere else and buy a house and settle my family.

I have always believed in the name DLF and inspite of my present financial situation I would still like to be a part of your colony. The rest depends on your goodselves I hope that my earnest money will not be forfeited but adjusted in this new property as it is a case of swapping.

Hoping for a favourable consideration.

With due regards,

Sd/-
SUNIL GULATI
Nov. 3, 1998"

Respondent through his advocate by a notice dated 26th March, 1999 called upon Appellant to pay the entire amount i.e., Rs. 25,83,625/- along with interest at the rate of 24% as also damages.

As Appellant did not accede to his request, he filed an application before the Commission purported to be under Section 12-B of the Monopolies and Restrictive Trade Practices Act, 1969 (for short "the Act") contending:

"The Applicant desired to swap the amount paid for this property against another property which was less expensive. The Applicant indicated his choice of property in this letter and requested the Respondent to adjust the amount paid in installments by the Applicant towards the cost of the new property. In the alternative the Respondent was asked to refund the money of the Applicant at the earliest. Thereafter the Applicant visited the office of the Respondent and inquired about the possible options now that it was decided that the Applicant was not proceeding with the purchase of this property. The Applicant was told by the Respondent to go in for a corporate discount scheme and then adjust the moneys already paid by

him against a new property which the Respondent would help him identify. Thereafter on many occasions the Applicant went to the office of the Respondent but was denied any sort of change in the situation. In fact on 28.08.98 the Applicant sent a fax and letter to the respondents from McCreade Software (Asia) Pvt. Ltd. to clarify that the applicant was working for them as a SAP Consultant. The respondent replied to this letter by their letter dated 12.12.98 that they had not received any intimation from the applicant on the subject of swapping and so were closing that option."

The application filed by Respondent herein was allowed by the Commission on arriving at the following findings:

"The Respondents did not reciprocate and took no steps to refund the amount even consequent to the terms of the agreement by retaining the earnest money and making the necessary payment to which the Applicants were entitled in law. The Applicants sent a legal notice through their Counsel dated March 26, 1999 which also had no effect and the Respondent continued to withhold the amount which was allegedly and validly due to the Applicants even according to the terms of the agreement. These facts illustrate that the Respondent was clearly guilty of unfair and restrictive trade practices causing immense damage to the Applicants. In this background, it is neither understood nor appreciated in what context the Respondent has made lengthy legal submissions taking shelter of the law which will not apply to the facts and circumstances of the present case. It is unfortunate that the Respondent only treated cancellation from 26th February, 2004 and claimed recovery from the Applicants for a sum of Rs. 33,21,290/-. This is a preposterous claim and cannot be given any credence. In this background we feel that even the forfeiture of earnest money by the Respondent cannot be justified as immense delay in the refund of the amount requested by the Applicants as far back as in 1998 was without any just and bonafide reason and is clearly an arbitrary and discriminatory exercise of power which does not vest in the Respondent. The gross delay in return of the money even in terms of the agreement by the Respondent is an unfair trade practice within the meaning of Section 36-A as well as restrictive trade practice within the meaning of Section 2(o) and the Compensation Application filed by the Applicants is maintainable and the Applicants are entitled for the relief as prayed for. The Respondent has also not proved any loss which may have occurred by the action of the Applicants to justify retention of alleged earnest money. Clause 7 of the agreement may also be referred to reiterate that the Respondent is not entitled to retain the earnest money in the facts and circumstances of the case. Furthermore the law is well settled that the party to a contract taking security deposit from the other party to ensure due performance of the contract is not entitled to forfeit

the deposit on ground of default when no loss is caused to it in consequence of such default."

Appellant was directed to refund the entire amount together with the interest at the rate of 12% per annum from the date of filing of the Compensation Application till the date of payment.

Mr. Anil B. Divan, learned senior counsel appearing on behalf of Appellant principally raised three contentions:

(i) The Commission had no jurisdiction to entertain the application as no case of indulgence in unfair trade practices or restrictive trade practices was made out.
(ii) Respondent did not prove as to how he suffered any damage by reason of any action on the part of Appellant.
(iii) In any event, in terms of Clause 17 of the Agreement, refund could be directed to be made only after deduction of earnest money.

Mr. O.P. Dua, learned counsel appearing on behalf of Respondent, on the other hand, would submit that Appellant in the instant case has accepted that a sum of more than Rs. 25 lakhs was paid. The only contention raised by Appellant, it was pointed out, was that such refund of the amount would be subject to deduction of the earnest money. It was contended that Appellant had been constructing flats. It had been promoting sale of apartments including promotion of the services which would come within the purview of the provisions of the said Act.

The fact involving Civil Appeal No. 7960 of 2004 is as under:

On 3.6.1995, Appellant made an application to DLF for sale of an apartment and a parking space for a total consideration of Rs. 54,37,664 and paid Rs. 5.48 lakhs as earnest money. In the application form, it was stated that the possession would be given in 4 years. Under clause 9 of the application form, it was stated that the existing fire fighting safety code/ regulations were already covered and extra fire-fighting charges would be levied if further measures are required to be taken due to additional requirements imposed by the authorities. It was also stipulated that DLF would send the buyer an Apartment Buyers' Agreement which the buyer would have to sign.

On 8.8.1998, DLF sent Appellant an unsigned Apartment Buyers' Agreement for his signatures thereupon. In this Agreement, DLF unilaterally altered the time period for handing over the possession. It extended the time period by a grace period of 90 days in terms of clause 15 of the application form. It also added several other exclusion clauses on various grounds and limited their liability for delay. However, Appellant signed the Agreement and returned it to DLF.

On 31.10.1995, DLF sent the Agreement signed by it at a future date, i.e., 6.11.1995. It had subsequently taken this date, i.e., 6.11.1995 as the base date for computing the compensation payable by it for delay. On the other hand, it purported to have counted delay on Appellant's part with reference to the date of application and, thus, it had burdened Appellant with interest for such prior period also. However, the said period is not a long one.

Appellant contended that Respondent had taken an advantage of eight months for which no compensation had been paid to anyone. Even at the rate it had offered compensation, this could have come to Rs. 120,000 for Appellant's flat. Since there were 134 flats in Windsor Court, DLF had gained well over Rs. 1.5 crores.

In a letter dated 14.10.1999 issued by DLF, it was stated that the apartment would be completed by January, 2000. It demanded an additional amount of Rs. 2,08,099.22 which included:

(i) Rs. 50,943.33 towards additional fire-fighting equipment.
(ii) Rs. 59,767.53 towards increase in area of 3.026 sq. mts.
(iii) Rs. 97,388.76 towards DG sets to provide about 7 to 10 KW per apartment.

It was further stated in the aforesaid letter:

"We are in the process of submitting these figures for independent auditing and we wish to assure you that if during the process of audit any reduction is effected, the same shall be credited to your account".

However, it allegedly never gave any accounts despite repeated requests. Appellant paid these amounts.

On 29.5.2000, Appellant requested DLF for the audited statement of accounts. DLF in its letter dated 9.6.2000 stated that the audit was not complete and it would inform him thereabout as and when the same is completed. It has not supplied audited accounts. However, it has only offered to show Appellant the accounts in its office when they become available.

On 25.7.2000, Appellant asked DLF for a statement of accounts which was denied by DLF.

On or about 31,7.2000, DLF asked Appellant to furnish an undertaking in the following terms:

Clause 11 "\005.Further, I hereby agree not to raise any claim or dispute on any account whatsoever."

Clause 16 "That I/We undertake not to approach HSEB for individual electric connection to the Apartment in view of the Power Back up being provided by the Company."

Appellant objected to the said terms of undertakings and on 5.8.2000 offered to submit the same without the objectionable clauses. DLF gave no reply thereto.

It may be mentioned that as of this date Appellant had paid all principal amounts. There was no demand for interest outstanding as on that date. On 11.11.2000, Appellant invoked Clause 18 of the agreement and cancelled his booking. He also exercised his option of taking immediate refund of the full amount in the alternative. As DLF did not act according to Clause 18, Appellant filed the application before the Commission.

The Commission held that Appellant was not seeking possession of the apartment but was seeking refund of the money deposited by him along with interest. It stated:

"Looking at the totality of facts and circumstances as discussed in the foregoing order, a case of unfair trade practice as defined in Section 36-A of the MRTP Act, is made out against the respondent. We have, therefore, no hesitation in holding that the applicant is entitled to refund of the amount deposited by him with interest. Although the applicant has claimed interest @20% per annum and he has also cited case law in support of his claim. He has also referred to the ruling of

Hon'ble Supreme Court to justify award of interest @18% per annum. However, in Ghaziabad Development Authority Vs. Union of India's case (supra), the Hon'ble Supreme Court has considered that it is reasonable to award interest @12% per annum. In a recent case in Sunil Gulati and another Vs. DLF Universal Limited in Compensation Application No. 222/1999 also, which is similar to the instant case, the MRTP Commission has ordered refund of the amount deposited by the applicant at a rate of 12% per annum.

In view of the above, we order that the respondent shall refund the entire amount of Rs. 57,45,763.22 (Rupees fifty seven lacs forty five thousand seven hundred sixty three and paise twenty two only) deposited by the applicant with interest @ 12% per annum from the date of filing of the present Compensation Application till the date of refund. We also award costs which are quantified at Rs. 30,000=00 (Rupees thirty thousand only). The respondent is directed to comply with this order within two months from the date of receipt of this order and file an affidavit of compliance within two weeks thereafter."

Appellant, who appeared in person, submitted that in the instant case Section 36-A of the Act was clearly attracted as the action on the part of DLF would come within the purview of the expression "for the purpose of promoting the sale". According to him, as there had been no cancellation, the offer remained valid and, thus, he was entitled to purchase the self-same flat at the rate which was prevailing in the year 2000 upon deducting the amount which has already been paid.

Mr. Anil Diwan, learned senior counsel appearing on behalf of Respondent would submit that the Commission in the facts and circumstances of this case had no jurisdiction to grant any relief to Appellant and in any event, it has not determined the jurisdictional fact.

The Act was enacted to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto. The Act, therefore, primarily deals with the control of monopolies and prohibition of monopolistic and restrictive trade practices.

'Trade Practice' has been defined in Section 2(u) to mean any practice relating to the carrying on of any trade, and includes\027
(i) anything done by any person which controls or affects the price charged by, or the method of trading of, any trader or any class of traders,
(ii) a single or isolated action of any person in relation to any trade.

Section 2(o) defines 'restrictive trade practice' to mean a trade practice which has, or may have, the effect of preventing, distorting or restricting competition in any manner and in particular,\027

(i) which tends to obstruct the flow of capital or resources into the stream of production, or
(ii) which tends to bring about manipulation of prices, or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such manner as to impose on the consumers

unjustified cost or restrictions.

The expression 'service' has been defined in Section 2(r) in the following terms:

"service" means service which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance chit fund, real estate, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amuse-ment or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service."

'Unfair trade practice' has been defined in Section 36-A of the Act to mean a trade practice which, for the purpose of promoting the sale, use or supply of any good or for the provision of any services, adopts any unfair method or unfair or deceptive practice including any of the practices enumerated therein.

Sub-section (1) of Section 36-A enumerates various kinds of visible representation.

The power of the Commission is enumerated under Section 12 of the Act. Section 12-A provides for the power of the Commission to grant temporary injunction. Power to award compensation by the Commission is contained in Section 12-B of the Act, sub-section (1) whereof reads as under:

"12B. Power of the Commission to award compensation.\027(1) Where, as a result of the monopolistic or restrictive, or unfair trade practice, carried on by any undertaking or any person, any loss or damage is caused to the Central Government, or any State Government or any trader or class of traders or any consumer, such Government or, as the case may be, trader or class of traders or consumer may, without prejudice to the right of such Government, trader or class of traders or consumer to institute a suit for the recovery of any compensation for the loss or damage so caused, make an application to the Commission for an order for the recovery from that undertaking or owner thereof or, as the case may be, from such person, of such amount as the Commission may determine, as compensation for the loss or damage so caused."

The power of the Commission to award compensation, therefore, is restricted to a case where loss or damage had been caused as a result of monopolistic or restrictive or unfair trade practice. It has no jurisdiction where damage is claimed for mere breach of contract.

It was not a case where a notice of inquiry had been directed. If there had been no inquiry, the petitioner has to file a suit wherein the relevant particulars are required to be stated as to how loss or damage occurred owing to one or the other trade practices referred to therein. The power of the Commission is not in addition to the power of the civil court. An application under Section 12-B of the Act would not lie where a complaint is confined to a breach of contract. Purchases on the part of Respondent must necessarily relate to one or the other trade practices contemplated under sub-section (1) of Section 12-B of the Act.

The question came up for consideration before this Court in Colgate Palmolive (India) Ltd. v. MRTP Commission and Others [(2003) 1 SCC 129] and Hindustan Ciba Geigy v. Union of India and Others [(2003) 1 SCC 134]. In Colgate Palmolive (supra), it was stated:

"16. A bare perusal of the aforementioned provision would clearly indicate that the following five ingredients are necessary to constitute an unfair trade practice:
1. There must be a trade practice [within the meaning of Section 2(u) of the Monopolies and Restrictive Trade Practices Act].
2. The trade practice must be employed for the purpose of promoting the sale, use or supply of any goods or the provision of any services.
3. The trade practice should fall within the ambit of one or more of the categories enumerated in clauses (1) to (5) of Section 36-A.
4. The trade practice should cause loss or injury to the consumers of goods or services.
5. The trade practice under clause (1) should involve making a "statement" whether orally or in writing or by visible representation."

Yet again in Premier Engineers v. Taj Rubber Industries and Another, [(2005) 6 SCC 610], following Colgate Palmolive (supra), this Court categorically held:

"12. In the present case, we find that in the application filed by the respondent applicant apart from saying that the defective machinery fitted with old/second-hand parts had been supplied after considerable delay the respondent did not say a word regarding the actual loss and injury or a notional loss caused to the respondent. There is nothing on the record to suggest that any actual loss or injury was caused to the respondent. The application filed by the respondent applicant was not only cryptic but lacked in particulars to fall within the definition of unfair trade practice as defined in Section 36-A read with Section 2(u) of the MRTP Act. The MRTP Commission in its order has not adverted to this fact and has not recorded a finding as to any actual loss or injury caused to the respondent."

We have noticed hereinbefore that the issue addressed before us veered around the question as to whether it was a sheer breach of contract or deficiency in service. There had been allegations and counter-allegations. The fact remains that the applicant before the Commission did not pay the amount. They intended to get refund of the amount which had already been paid. They sought for grant of interest also.

In Civil Appeal arising out of SLP (C) No. 26795 of 2004, Appellant was entitled to deduct the amount of earnest money. A distinction exists between the security and earnest money. The Commission unfortunately lost sight of the said issue.

In H.U.D.A. and Another v. Kewal Krishan Goel and Others, [(1996) 4 SCC 249, the law was stated in the following terms:

"7. A combined reading of the aforesaid three

clauses of letter of allotment together with the advertisement issued indicates that the scheme of allotment was that an applicant could make an application along with 10% of the tentative price of the land as earnest deposit. On receipt of the letter of allotment he is required to indicate either his letter of acceptance or letter of refusal within 30 days from the date of the receipt of the allotment letter. In case of acceptance he would be further required to make an additional deposit which deposit together with the earnest money already deposited would constitute 25% of the total tentative price. If he fails to accept the allotment within 30 days from the date of receipt of the letter then the authority is entitled to forfeit the earnest money. Further the balance amount could be deposited in instalments. Thus under the allotment in question an allottee was required to deposit 10% of the tentative price of the land as earnest money which is given to bind the contract and the said earnest money could be forfeited by the authority in case the allottee does not communicate the letter of refusal within 30 days from the date of receipt of the allotment order."

In the facts of the matter, it was held that the demand was not unreasonable.

Yet again in Union of India v. Rampur Distillery & Chemical Co. Ltd. [(1973) 1 SCC 649], this Court stated:

"3. Only one contention was urged on behalf of the appellants before us: that the security deposit was taken from the respondents in order to ensure the due performance of the contract and respondents having defaulted, the entire amount was liable to be forfeited. A similar contention was advanced before this Court but was rejected in Maula Bux v. Union of India.The appellant therein had entered into a contract with the Government of India for the supply of certain goods and had deposited a certain amount of security for the due performance of the contract. As in the instant case, it was stipulated in the contract there that the amount of security deposit was to stand forfeited in case the appellant neglected to perform his part of the contract. On the appellant committing default in the supply, the Government rescinded the contract and forfeited the security deposit. It was held by this Court that forfeiture of earnest money under a contract for sale of property does not fall within Section 70 of the Contract Act, if the amount is reasonable, because the forfeiture of a reasonable sum paid as earnest money does not amount to the imposition of a penalty. But, "where under the terms of the contract the party in breach has undertaken to pay a sum of money or to forfeit a sum of money which he has already paid to the party complaining of a breach of contract, the undertaking is of the nature of a penalty". It was further held that the amount deposited by way of security for guaranteeing the due performance of the contract cannot be regarded as earnest money."

The distinction between a security and an earnest money has also been pointed out by this Court in Maula Bux v. Union of India [(1969) 2 SCC 554] in the following terms:

"4. Under the terms of the agreements the amounts deposited by the plaintiff as security for due performance of the contracts were to stand forfeited in case the plaintiff neglected to perform his part of the contract. The High Court observed that the deposits so made may be regarded as earnest money. But that view cannot be accepted. According to Earl Jowitt in Dictionary of English Law at p. 689; "Giving an earnest or earnest-money is a mode of signifying assent to a contract of sale or the like, by giving to the vendor a nominal sum (e.g. a shilling) as a token that the parties are in earnest or have made up their minds". As observed by the Judicial Committee in Kunwar Chiranjit Singh v. Har Swarup:
"Earnest money is part of the purchase price when the transaction goes forward; it is forfeited when the transaction falls through, by reason of the fault or failure of the vendee."
In the present case the deposit was made not of a sum of money by the purchaser to be applied towards part payment of the price when the contract was completed and till then as evidencing an intention on the part of the purchaser to buy property or goods. Here the plaintiff had deposited the amounts claimed as security for guaranteeing due performance of the contracts. Such deposits cannot be regarded as earnest money."

Referring to Section 74 of the Indian Contract Act, it was observed:

"There is authority, no doubt coloured by the view which was taken in English cases, that Section 74 of the Contract Act has no application to cases of deposit for due performance of a contract which is stipulated to be forfeited for breach, Natesa Aiyar v. Appayu Padayachi; Singer Manufacturing Company v. Raja Prosad; Manian Pattar v. Madras Railway Company. But this view is no longer good law in view of the judgment of this Court in Fateh Chand case. This Court observed at p. 526:
"'Section 74 of the Indian Contract Act deals with the measure of damages in two classes of cases: (i) where the contract names a sum to be paid in case of breach, and (ii) where the contract contains any other stipulation by way of penalty\005,' 'The measure of damages in the case of breach of a stipulation by way of penalty is by Section 74, reasonable compensation not exceeding the penalty stipulated for.' "

The Court also observed:
"It was urged that the section deals in terms with the right to receive from the party who has broken the contract reasonable compensation and not the right to forfeit what has already been received by

the party aggrieved. There is however no warrant for the assumption made by some of the High Courts in India, that Section 74, applies only to cases where the aggrieved party is seeking to receive some amount on breach of contract and not to cases whereupon breach of contract an amount received under the contract is sought to be forfeited. In our judgment the expression "the contract contains any other stipulation by way of penalty" comprehensively applies to every covenant involving a penalty whether it is for payment on breach of contract of money or delivery of property in future, or for forfeiture of right to money or other property already delivered. Duty not to enforce the penalty clause but only to award reasonable compensation is statutorily imposed upon courts by Section 74. In all cases, therefore, where there is a stipulation in the nature of penalty for forfeiture of an amount deposited pursuant to the terms of contract which expressly provides for forfeiture, the court has jurisdiction to award such sum only as it considers reasonable, but not exceeding the amount specified in the contract as liable to forfeiture, and that, "There is no ground for holding that the expression 'contract contains any other stipulation by way of penalty' is limited to cases of stipulation in the nature of an agreement to pay money or deliver property on breach and does not comprehend covenants under which amounts paid or property delivered under the contract, which by the terms of the contract expressly or by clear implication are liable to be forfeited."

DLF, therefore, cannot be said to be wrong in exercising its right to forfeit the earnest amount.

It may be so, but we have noticed hereinbefore that Respondent in its letter dated 3.11.1998 gave three offers. It was expected that at least the amount would be refunded after deducting the earnest amount. DLF, however, did not do so.

In Civil Appeal arising out of SLP (C) No. 26795 of 2004, we, therefore, are of the opinion that the interest of justice would be subserved if we, in exercise of our discretionary jurisdiction under Article 142 of the Constitution of India keeping in view the facts and circumstances of this case, direct DLF to pay a sum of Rs. 37 lakhs to Respondent herein. Such payment should be made within four weeks from date failing which interest at the rate of 9% per annum shall be levied till actual payment is made. The appeal is disposed of accordingly.

In Civil Appeal No. 7960 of 2004, the principal contention of Appellant was his insistence on the part of the developer not to deposit further amount by way of additional fire fighting equipments as the same was not necessary. Our attention has further been drawn to the fact that DLF insisted on furnishing of undertakings which is contrary to law. Appellant also questions the levy of holding charges and/ or maintenance charges. There had been some delay also in handing over of the possession. DLF, however, appears to have treated all the allottees on similar terms.

The validity or otherwise of the conditions imposed by DLF is not in question. It was, therefore, not a case which could be entertained by the Commission. However, we suggested as to whether Appellant herein can be given possession of the flat on his clearing of the dues, DLF agreed thereto.

The total amount payable in respect of the flat is a sum of Rs.17,27,612/-. DLF has agreed to deduct a sum of Rs.93,745/- which was agreed to be paid by way of compensation. The total amount payable, therefore, would be Rs.16,33,867/-. The amount has been calculated on the premise that the registration would be done in the name of Appellant's wife and/or daughter on the rate of stamp duty and charges payable in case of family allottee.

We furthermore clarify that Appellant, upon getting possession of the said flat shall be treated by DLF at par with all others similarly situated. Appellant may pay the aforementioned amount of Rs.16,33,867/- within eight weeks from date, whereupon, Respondent shall execute and/or register the requisite documents in favour of the wife of Appellant.

We are passing this order on broad consensus arrived at by the parties as also in exercise of our jurisdiction under Article 142 of the Constitution of India.

This order shall not be treated to be a precedent.

We are, therefore, of the opinion that in a case of this nature the Commission had no jurisdiction. Civil Appeal No. 7960 of 2004 and Civil Appeal arising out of SLP (C) No. 3788 of 2005 are disposed of accordingly.