

**IN THE STATE COMMISSION: DELHI**

(Constituted under section 9 of the Consumer Protection Act, 1986)

Date of Hearing:01.03.2021

Date of Decision:19.03.2021

**Complaint No.576/2013**

**IN THE MATTER OF**

SMT. KESHMATI MEENA  
Prop. Of M/s Spaks India,  
W/ Sh. S.K. Meena,  
R/o Bunglow No. 8, Type-5,  
Jal Vihar Colony,  
New Delhi-110024

....Complainant

**VERSUS**

ALLAHABAD BANK  
Through its Chairman  
17, Parliament Street,  
New Delhi-110001

....Opposite Party

**HON'BLE SMT. JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)**  
**HON'BLE SH. ANIL SRIVASTAVA, MEMBER**

1. Whether reporters of local newspaper be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes

Present: None for the either Parties

**PER: ANIL SRIVASTAVA, MEMBER**

**JUDGEMENT**

1. This complaint under Section 17 of the Consumer Protection Act 1986, the Act, has been filed Smt. Keshmati Meena, for short complainant, against the Allahabad Bank, hereinafter referred to as OPs, alleging deficiency of service on

the part of the OP, they not having refunded the earnest money deposited by her while participating in the auction for a flat in New Delhi which flat was later found to be in litigation before Debts Recovery Tribunal and praying for the relief as under:-

*In view of the aforesaid facts and circumstances the complainant is entitled to the following amounts:*

- a. Towards principal by way of refund of Rs. 7,90,000/- paid by the complainant as Earnest Money;*
- b. Direct the OP/Bank to pay an interest @ 24% per annum from the date of payment of Earnest Money i.e. 12.11.2010 till 18.10.2013 amounting to Rs. 3,68,809/-;*
- c. Pendente lite and future interest;*
- d. Direct the OP/Bank to pay towards damages for mental tension and agony and harassment to a woman due to deficiency of service on the part of the OP amounting to Rs. 10,00,000/-;*
- e. Direct the OP/Bank to pay to the complainant a sum of Rs. 1,75,000/- towards cost for filing this complaint;*
- f. The complainant is therefore entitled in total a sum of Rs. 23,31,731/- as on 18.10.2013 and/or;*
- g. Pass such further order(s) as this Hon'ble Commission may deem just and proper in the facts and circumstances of the case.*

2. Facts of the case necessary for the adjudication of the complaint are these.
3. An advertisement was published by the respondent bank in leading newspapers/dailies for auction of property mentioned under property code no. AZP-2 under the heading "Notice of Sale under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, read with Rules Including Rule 6 and/or Rules 8 of the Security Interest Rules, 2002. The time and place of opening tenders was fixed at 11:00 A.M. on 12.11.2010 at the Zonal Office, Allahabad Bank, 17, Parliament Street, New Delhi-110001. The complainant on seeing the above-mentioned advertisement participated in the auction process. The complainant was the successful bidder and the Bid amount was Rs. 31.15 lacs against the reserve price of Rs. 25 lacs.

The complainant being successful bidder paid 25% of the Bid Amount/Sale Price i.e. Rs. 7.90 lacs. Vide letter of this date respondent-bank demanded the remaining 75% amount i.e. Rs. 23.25 lacs to be paid on or before 11.12.2010, failing which the amount already deposited shall stand forfeited and the property shall be resold. The aforementioned letter was received by the complainant on 04.12.2010, thereby leaving very little time for the complainant to do the needful. In reply to the letter dated 26.11.2010 of the respondent-bank the complainant expressed her shock since the respondent bank had totally concealed the fact that there is a pending litigation in respect of the auction property, that it is not free from encumbrances and that the bank is neither the owner, nor in possession of the said property and as such, had played a fraud on the complainant and had breached the trust reposed by the complainant on the bank. The complainant further expressed her unwillingness to go ahead with the purchase of that property and requested the respondent-bank to refund the 25% bid amount i.e. Rs. 7.90 lacs alongwith interest.

4. In the meanwhile the complainant made regular visits to the bank to inquire about the status and details of the pending litigation, but the bank authorities always concealed information on some pretext or the order. The complainant wrote to the bank again stating that despite one year having passed and despite several personal visits and repeated reminders, neither any reply nor the earnest money had been refunded by the complainant and as such, requested once again to the respondent-bank to refund to her the earnest money alongwith interest.
5. The respondent-bank in response thereto replied to the complainant on 14.01.2012 after a period of 9 months stating inter- alia that:

*“As per the letter no ZOND/Recovery/916 dated 26.11.2010 sent by the Authorised Officer, you were required to deposit the balance amount of Rs. 23,25,000.00 on or before 11.12.2010. Meanwhile one Sh. Om Prakash had filed S.A. No. 508/2010 and had obtained stay order against the sale due to which you had not deposited the balance amount.”*

6. The said S.A. No. 508/2010 however has been disposed off vide order dated 26.09.2012 and the stay order stands vacated. It is pertinent to mention here that this was the first time since 2010, that the bank disclosed information regarding the pending litigation. It may be noted further, that till that day the respondent-bank was not in possession of the property which it auctioned two years back thereby playing a fraud on the complainant.
7. The refund of the amount not having this been done complaint has been filed for the redressal of grievances.
8. OPs were noticed and in response thereto they have filed the written statement resisting the complaint stating, inter alia, that the complainant being auction purchaser cannot agitate issues before the Consumer Forum as the jurisdiction for hits issue lies with the Debts Recovery Tribunal established under the provisions of Recovery of Debts due to the Banks and Financial Act 1993 or under the Provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.
9. Evidence by way of affidavit and written arguments by both parties above also been filed.
10. This matter was listed before this Commission for final hearing on 01.03.2021 when no appearance was made by either side. We have perused the records and gone through the written arguments filed by both sides.
11. Short question for adjudication in this complaint is whether the complainant is entitled for the refund of the earnest money as prayed for. This

leads us to examine whether the complainant being the auction purchaser is a consumer within the meaning of Section 2(1)(d) of the Act and secondly whether the subject matter being seized off under the *SARFAESI ACT* can be adjudicated by the Consumer Forum.

12. The Hon'ble NCDRC in the matter of State Bank of India versus G. Mahimaiah, First Appeal 483/2014, decided on 30.10.2015 is pleased to observe as under:-

*“Based on the above discussion and examination, we are of the view that first of all the respondent auction purchaser is not a consumer under the Consumer Protection Act 1986 and the Consumer complaint was not maintainable on this ground alone.....”*

13. The Hon'ble NCDRC in yet another matter, in the matter of Bank of India versus Anil Raveendran decided on 03.03.2015 observed as under:-

*We have considered the rival contentions. On careful perusal of record, it is evident that petitioner opposite party had initiated proceedings under *SARFAESI ACT* against the respondent complainant prior to filing of the consumer complaint. In the aforesaid context, it is to be seen whether in view of *Section 34* of the *SARFAESI Act*, the consumer courts had jurisdiction to entertain the complaint filed after the initiation of the recovery proceedings under *SARFAESI ACT*. This issue is no more resintegra. The issue came up before the Coordinate Bench of this Commission in RP No. 995 of 2012 titled *Harianandan Prasad Vs. State Bank of India* decided on 31.05.2012 wherein the coordinate Bench has held thus:*

*“Even then we have heard learned counsel for the petitioner on merits and have considered his submissions. From a conspectus of the facts and circumstances of the case and material obtaining on record, there cannot be denial of the factual position that faced with the recovery proceedings initiated by the Bank, the complainant had filed consumer complaint alleging deficiency in service on the part of the Opposite Party Bank. The District Forum unmindful of the provisions of *section 34* of the said Act had passed an adinterim order directing the opposite party bank not to take any steps for recovery of the loan dues from the complainant by taking coercive measures. In our view, to say the least, such an order was clearly without jurisdiction and amounted to the usurping of the jurisdiction which was legally vested in another statutory tribunal under a particular statute. The State Commission has done well in*

setting aside the said order and dismissing the complaint because once it is found that the complainant had already approached the Appropriate Tribunal which was ceased of the entire gamut of controversy. The complainant could not agitate the said question before a consumer fora established under the [Consumer Protection Act, 1986](#). Various tribunals constituted under the statute are expected to exercise their jurisdiction in accordance with the provisions of the Act under which they have been constituted. There is a clear cut demarcation of the jurisdiction and powers amongst various tribunals and no attempt should be made by one Tribunal to usurp the powers and jurisdiction of other either directly or indirectly. Such a situation may lead to anomalous situation because the orders passed by the two or more tribunals on the same controversy may vary. The question would then arise as to which of the order is binding and valid on the parties. Such a situation has to be avoided in all circumstances. In the case in hand, what we have found is that the District Forum has exercised a jurisdiction which was not vested in it. Rather such a jurisdiction was specifically taken away from any other Court / Tribunal / Forum under [section 34 of the Act, 2002](#)."

Similarly view was taken by another Bench of this Commission in Consumer Complaint No. 302 of 2012 tiled Yashwant G Ghaisas & Ors. Versus Bank of Maharashtra decided on 06.12.2012. An appeal against the said order was filed in the Supreme Court and Civil Appeal No. 1359 of 2013 was dismissed by the Hon'ble Supreme Court with following observations:

"It is clear that this case is covered under the Securitization and Reconstructions of Financial Assets and [Enforcement of Security Interest Act, 2002](#). [Section 34](#) of the said Act is reproduced as hereunder:-

34. Civil court not to have jurisdiction. - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)".

The National Commission is not empowered to arrogate to itself the powers which come within the jurisdiction of Debt Recovery Tribunals. This matter is purely covered within the jurisdiction of DRT or DRAT. If there is any grievance against the notice under [Section 13 \(2\)](#) of the [SARFAESI ACT](#) that should be brought to the notice of the concerned authority. It is well settled that main creditor and the guarantors are equally responsible. There lies no

*rub for the bank to take action against the guarantor directly. It cannot be alleged that he is adopting the policy of pick and choose. From the allegations stated above, there appears to be no deficiency on the part of the opposite party. In case the bankers are working within the ambit of SARFAESI ACT, it cannot be said to be deficiency on the part of the bank. It must be established that there is deficiency on the part of the bank. In that case this commission can take action. For the reasons stated above, the complaint is dismissed at the stage of its admission. Nothing will preclude the complainants from approaching the appropriate Forum as per law.*

14. Having regard to the discussion done and the legal position explained we are of the considered view that the complaint is not maintainable before the Consumer Forum since the complainant being the auction purchaser is not a consumer and thus not entitled to raise the consumer dispute. Secondly the issue, relying on Section 34 of the SARFAESI ACT, cannot be adjudicated by this Commission. Accordingly the complaint is returned granting liberty to the complainant to file it before the appropriate forum enjoying the jurisdiction therefor.
15. Ordered accordingly, leaving the parties to bear the cost.
16. A copy of this order be forwarded to the parties to the case free of cost as is statutorily required. File be consigned to records.

**(Dr. JUSTICE SANGITA DHINGRA SEHGAL)  
PRESIDENT**

**(ANIL SRIVASTAVA)  
MEMBER**

PRONOUNCED ON  
19.03.2021

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