A DELHI DEVELOPMENT AUTHORITY

v.

SKIPPER CONSTRUCTION CO. (P) LTD. AND ORS.

DECEMBER 17, 1999

B [M. JAGANNADHA RAO AND U.C. BANERJEE, JJ.]

Transfer of Property Act, 1882 :

Section 55(6) (b)—Purchasers under agreement in respect of immovable
C *property—whether they have statutory charge against interest of vendor in property—Absence of contract to contrary and purchaser not declining to accept delivery—Held, purchaser will have statutory charge insofar as purchase money and interest on such amount are concerned—Charge available against vendor and all persons claiming under him—Property upon which charge created converted into another form—Effect of—Held,*
D *charge will fasten against substituted security—Period of limitation for enforcing statutory charge—Held, twelve years from date when money becomes due—Limitation Act, 1963—Article 62.*

Interest—Term in agreement that builder not liable for interest if transaction fails—Finding of fraud against builder—Whether builder can
E *invoke the term to deny payment of interest—Held, builder cannot rely upon term and escape payment of interest—Once there is fraud, inducement for payment cannot be traced to agreement.*

Appellant S purchased land from Delhi Development Authority (D.D.A.) in auction, and default in making balance payment resulted in litigation
F **between them. S was allowed to raise constructions over the land subject to certain conditions imposed by the court. S sold space in proposed building to buyers in excess of units available despite order dated 29.1.1991 expressly prohibiting creation of rights of third parties in the building. When S failed to deposit amount in court, DDA re-entered plot and took physical possession**
G **alongwith building thereon and sold it for Rs. 70 crores with permission of the court. Thereafter, this court directed D.D.A. to deposit Rs. 16.75 crores and distributed it alongwith some other amount between pre and post 29.1.1991 buyers towards their principal amount deposited with S. This court vide judgement dated 6.5.1996 held that pre 29.1.1991 and post 29.1.1991 purchasers had to be reimbursed in full including interest at appropriate**
H **rate.**

This judgement deals with claims of persons filed after delivery of judgement dated 6.5.1996 and issues remaining undecided or not decided finally in earlier orders of this court including whether D.D.A. should deposit amount in excess of Rs. 16.75 crores in respect of disputed structure. A

D.D.A. contended that the issue had become final by judgement dated 6.5.1996 and could not be re-opened. S contended that interest was not payable to buyer in case transaction failed in view of stipulation to that effect in sale agreement. Amicus Curiae contended that S could not rely on said clause in view of earlier finding relating to fraud against S by this Court. B

Disposing of the matter, the Court C

HELD : 1.1. It is plain from the provisions in sub-clause 6 of Section 55 of the Transfer of Property Act that, in the absence of a contract to the contrary, the buyer will have a charge on the seller's interest in the property which is the subject matter of the sale agreement insofar as the purchase money and interest on such amount are concerned, unless the buyer has improperly declined to accept delivery. The charge is available against the seller and all persons claiming under him. This charge in favour of the buyer is the converse of the seller's charge under Section 55 (4) (b). The buyer's charge under this Section is a statutory charge and differs from a contractual charge which a buyer may be entitled to claim under a separate Contract. No charge is available unless the agreement is genuine. D E

[523-A, B]

Chettiar Firm **v.** *Chettiar,* **AIR [1941] P.C. 47 and** *T.N. Hardas* **v.** *Babulal,* **AIR [1973] SC 1363, relied on.**

Mulla's Commentary on Transfer of Property Act, **8th Ed. Page 411, referred to.** F

1.2. When the property upon the charge is created gets converted into another form, the buyer will be entitled to proceed against the substituted security. This is a general principle of law and the same principle applies to cases of statutory charge under Section 55(6) (b). If immovable property is charged and is converted into another property or money, then the charge will fasten on the property or money into which the subject matter of the agreement is converted. [523-D, E, F] G

Barham Deo Prasad **v.** *Tara Chand,* **[1913] 41 I.A. 45 (P.C.), relied on.** H

A *Muniappa* v. *Subbaiah,* **AIR [1917] Mad. 880, approved.**

1.3. Sub-section 6 of Section 55 of the Act also makes it clear that the buyer is entitled to interest on the amount of purchase money paid. Interest is payable from the date of payment of the purchase money to the seller till date of delivery of property to the purchaser or till the execution of the sale
B **deed, whichever is earlier. [523-G]**

2. From Article 62 of the Limitation Act, 1963, it is clear that the period of limitation for enforcement of the statutory charge created under Section 55(6) (b) is 12 years from the date when it becomes due and not 3 years. The period remains the same even for enforcement of the charge on
C **the substituted security. Time runs from the date "when money becomes due". [523-H; 524-A]**

3. There is a clear finding of 'fraud' against S in the order of this court dated 15.1.1995. This is because, when the available units of
D **accommodation are said to be 870 or less, S had given bookings in favour of 2700 buyers and collected huge sums. This was obviously, fraudulent. Builders are not in law supposed to enter into agreement with more number of buyers than there are flats, unless each of the buyers in excess of the number of available units of accommodation is put on notice that his purchase will depend upon the availability of units of accommodation. To say that these**
E **amounts paid by the buyer will not carry interest is wholly unconscionable. S, therefore, cannot be allowed to relay upon the term relating to contract to the contrary and escape the payment of interest. Once there is fraud, the inducement for payment by the purchasers cannot be traced to the agreement. [524-E, F, G, H]**

F *Delhi Development Authority* v. *Skipper Construction Co. (P) Ltd.,* **[1996] 4 SCC 622, relied on.**

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 21000 of 1993.

G From the Judgment and Order dated 9.12.1993 of the High Court of Delhi at New Delhi in Suit No. 770/93.

Mukul Rohtagi, ASG., Altaf Ahmad, ASG., Joseph Vellappally, (AC), F.S. Nariman, K.T.S. Tulsi, R.K. Jain, M.L. Verma, P.P. Malhotra, Dr. V.N. Saraf,
H Dayan Krishnan, Ms. Kamini Jaiswal, M/s. B.S. Nagar, Ashok Mathur, Shambhu

Prasad Singh, Ms. Manjula Gupta, M/s.Ravikesh Sinha, Gopal Jain, Ms. Urmila Lamba, Ravinder Nath, M/s. Rajinder Narain & Co., M/s. Rishi Malhotra, Vikas Pahwa, Sultan Singh, Prem Malhotra, R.D. Kewalramani, M/s. V. Datta Makhija, Sanjay Hegde, Subhash Shar, M/s. Arvind Kumar Sharma, S.U.K. Sagar, Jaideep Gupta, H.S. Parihar, Kuldeep S. Parihar, Ms. Sushma Suri, Y.P. Mahajan, S.N. Terdol, Ms. Monica Sharma for M/s.S.A. Shroff & Co., Sunil Dogra, M/s. G.M. Kawoosa, Ashok Mathur, Manoj Goel, S. Roy, Ms. Abha R. Sharma, Rajiv K. Garg, Ms. Manisha, Ms. Bhavna, N.D. Garg, V.N. Koura, Ms. Paramjit Benipal, A. Mariarputham, Ms. Aruna Mathur for M/s. Arputham, Aruna & Co., Ravindra Kumar, Rajesh Srivastava, H.K. Puri, S. Sukumaran for M/s. J.B.D. & Co., Y.P. Narula, Anil K. Chopra, Ram Ekbal Roy, Ms. S. Janani, Ashwani Bhardwaj, S.P. Sharma, Praveen Swarup, S. Shankar, Din Dayal Sharma, K.K. John, J.K. Das, Ms. Binu Tamta, R.C. Gubrele, V.K. Verma, S.K. Kulkarni, P.R. Ramasesh, M/s. Janendra Lal & Co., C.N. Sree Kumar, S.K. Verma, Ms. Sumita Mukherjee, Ms. Nanita Sharma, Jaswant Singh, Sanjay Parikh, Dr. Nafis A. Siddiqui, Sandeep Narayan, Ms. Anjali, Pawan Verma, S.K. Garg, M/s. G. Acharya, S. Pani and A.P. Medh for the appearing parties.

The Judgment of the Court was delivered by

M. JAGANNADHA RAO, J. On May 6th, 1996 this Court delivered judgment in *Delhi Development Authority* v. *Skipper Construction Co.(P) Ltd.*, [1996] 4 SCC 622. Thereafter, various other issues regarding the Skipper group of Companies continued to pose serious issues of law and fact. Sometimes, it looked like a maze which could baffle lawyers and courts alike. More claims with regard to Jhandevalan property-which was the subject matter of the above case, -of persons who claimed to be purchasers of space proposed to be built at Jhandevalan came before us. In addition, claims of similar purchasers of property at Barakhamba Road and also in regard to Technology Park, came before us. In this judgment, we propose to deal with certain issues concerning the Jhandevalan property which have remained undecided or not decided finally in the earlier orders of this Court.

In order to understand how these issues arise, it is necessary to go back (A) to the long history of events set out in the above said judgment and (B) to the subsequent events. In Part (C) we shall deal with four issues which have crystallised. In the rest of this judgment Delhi Development Authority is described as DDA and Skipper Construction Company (P) Ltd is described as Skipper, for convenience.

PART A

In October, 1980, Skipper became the highest bidder for purchase of a

A plot of land at Jhandevalan in Delhi which was advertised for sale for Rs. 9.82 crores and deposited 25% of the price. The balance was to be deposited as per the tender schedule. Skipper defaulted in spite of seven extensions during January 1981 to April 1982. When proceedings for cancellation of the bid were in the offing, Skipper moved the Court and obtained a stay order on 29.5.82 and started making representations. DDA appointed a Committee to work out B a formula and pursuant to the recommendations of the Committee, Skipper was asked to enter into a revised agreement incorporating fresh terms. Skipper raised objections to these proposals from 1984 till 1987 but finally the agreement was entered into on 11.8.87. Even before permission to enter was however granted under the revised agreement, Skipper started selling the space to be C built in the proposed structure and started receiving monies. Though Skipper paid the 1st instalment much beyond the time, it did not pay the second instalment but furnished Bank guarantees which were found to be defective. It, however, made some token payments to DDA. Subsequently, CWP.2371/1989 was filed for a direction to DDA to sanction plans/permit construction at its risk. On 19.3.90, High Court of Delhi permitted construction in accordance D with sanctioned plan subject to deposit of Rs. 20 lakhs in two instalments and 1.94 crores in one month. DDA filed SLP (C) 6338/90 and 6339/90. Meanwhile, the Delhi High Court passed an order in the WP.2371/89 on 21.12.90 directing payment of Rs.8.12 crores approx. in 30 days and stopped further construction w.e.f. 9.1.91 till payment and stated that in default, the revised agreement E dated 11.8.87 would stand cancelled and DDA would be entitled to re-enter the plot. Reasons for the order were given on 14.1.91, Skipper defaulted but approached this Court on 29.1.91 in SLP(C) 186/91 when this Court passed an interim order for deposit of Rs.2.5 crores in one month and Rs.2.5 crores before 8.4.91 and Skipper was expressly prohibited from inducting any person in the building and from creating any rights in favour of third parties. In spite F of it, Skipper issued advertisement on 4.2.91 and on later dates in newspapers in Delhi and invited further purchasers to purchase the space in the proposed building. Sales agreements were entered into by certain purchasers inspite of DDA's warning dated 13.2.91 published in newspapers. SLP(C) 186/91 was dismissed on 25.1.93.

G

DDA re-entered the plot and took physical possession on 10.2.93 *along with the building* thereon "free from all encumbrances" *in terms of* the revised agreement/licence and as provided in the orders of the Delhi High Court dated 21.12.90 and 14.1.91. It also "*forfeited*" the amounts paid till then by Skipper in terms of the revised agreement dated 11.8.87 and the judgment H of the Delhi High Court.

It is stated in *DDA* v. *Skipper Construction Co.(P) Ltd.*, [1996] 4 SCC 622) that before 29.1.91 Skipper collected about Rs.14 crores from various parties to sell space in the proposed building. Even after 29.1.91, Skipper collected various amounts, about Rs.11 crores. It appears that the same space was sold to more than one person and monies were collected.

Skipper filed suit No. 770/93 against DDA seeking injunction restraining DDA from interfering with its alleged title and possession over the plot and sought a declaration that the re-entry by DDA was illegal and sought a declaration that it had validly paid all amounts due to DDA. It obtained stay of re-auction. Against the order dated 9.12.93, DDA filed SLP.21000/93. This Court issued suo motu contempt proceedings against Tejwant Singh and his wife (Surinder Kaur), Directors of Skipper. This Court held them guilty of contempt and under Article 129 and Article 142, sentenced them to imprisonment and fine of Rs.50,000 each. Attachment orders were passed on 8.2.95 as follows:

> "All the properties and bank accounts standing in the names of the contemners and the Directors of M/s Skipper Construction Co.(P)Ltd. and their wives, sons and unmarried daughters shall stand attached.

Later on, the sentence was deferred subject to condition of their furnishing bank guarantee for Rs.11 crores by 31.3.95 and a deposit of Rs.11 crores by 30.3.95. It was also said:

> "List of properties given by the contemners to be taken on record. The contemners will also file a list of properties held by their sons and unmarried daughters within one week from today."

The Court also said:

> "The attachment of the properties and the bank accounts shall stand raised on the contemners furnishing the bank guarantee as aforesaid."

The contemners deposited Rs. 2 crores but failed to deposit the balance and also failed to furnish Bank guarantee. They were committed to prison and they served the sentence. DDA invited fresh tenders and sold the plot with the 14th floor structure (incomplete) to M/s Banganga Investments (Videocon) for Rs.70 crores. The sale was accepted with permission of Court and the purchaser deposited the consideration with DDA and *the land and structure* stood transferred to the purchaser.

A This Court felt concerned about the buyers to whom space was sold before 29.1.91 and later. Claims of those who purchased before 29.1.91 were estimated to amount of Rs.14 crores. DDA was, therefore, directed to deposit Rs.16.75 crores in this Court.

This Court appointed Justice R.C.Lahoti Commission to go into the B claims of purchasers before 29.1.91 and a report dated 2.2.96 was submitted by that Committee. A sum of Rs. 13.27 crores approx. was paid to about 700 persons.

This Court appointed Justice O. Chinnappa Reddy to inquire into role of DDA officers and a Report was received on 7.7.95. This Court appointed C Justice Saharya Commission to inquire into conduct of Bank officials. A Report was submitted in that connection. The issues arising from the said reports would be taken up later.

Another order was passed on 6.5.96 appointing Justice O. Chinnappa Reddy to go into the post 29.1.91 sales and a Report was submitted. In D respect of these purchasers, the principal amount of about Rs.6.50 crores held due to them has been paid from funds lying in deposit in this Court.

The judgment of this Court in *DDA* v. *Skipper Construction Co. (P) Ltd.,* [1996] 4 SCC 622 shows that DDA filed a list of properties held by Tejwant Singh, his wife, Surinder Kaur and their sons and daughters which E properties, according to them, belonged to these persons. Question arose whether the various companies of which they were Directors were merely 'fronts' or "devices" to defraud and defeat the claims of purchasers. Then this Court held that (a) the contemners could not be allowed to enjoy or retain the fruits of contempt; (b) the corporate veil could be lifted and that the Court F was not precluded from treating the properties as "one entity belonging to Tejwant Singh and family" (c) that the concept of resulting trust laid down in *Attorney General for India* v. *Amratlal Prajivandas,* [1994] 5 SCC 54, could be applied, (d) that Article 142 could be applied, in the absence of statutory provision, and that when:

G "someone has acquired property by defrauding the people and if it is from that the persons defrauded should be restored to the position in which they would have been but for the said fraud, the Court can make all necessary orders."

In the judgment, this Court held (see para 34) (1) that pre 29.1.91 H purchasers had to be re-imbursed *in full,* "which means that they should also

be paid interest at the appropriate rate". (2) Secondly, the post 29.1.91 purchasers had also to be re-imbursed "in full". (3) Ignoring the corporate veil, the property under lease to Israel Embassy at No.3, Aurangjeb Road, could be sold. (4) For that purpose it would stand attached-(if not already attached) and the said property would be sold if Tejwant Singh and wife were not able to deposit Rs.10 crores by 6.7.96 (5) attachment of all properties was to continue including the one on properties mentioned in IA.29/96 filed by DDA. (Skipper failed to make the payment as directed above).

The above is the long list of events and orders/directions issued in *DDA* v. *Skipper Construction Co.(P) Ltd.*, [1996] 4 SCC 622.

PART B

It will be useful to summarise the events subsequent to May 6, 1996 briefly.

On 10.2.99, this Court directed Skipper to file a list of all immovable properties held or owned by them either in their own personal names or in the names of the companies of which they were on the Board of Directors or in which they were share-holders and similarly those in the names of their sons or unmarried daughters.

On 15.3.1991, this Court referred to an earlier order passed by this Court on 8.2.95 in SLP(C) 21000/93 attaching "the bank accounts in the names of contemners and the Directors of M/s Skipper Constructions Co.(P) Ltd. and their wives, sons and unmarried daughters". This Court held that by the judgment dated 6.5.96, properties of Technology Park Ltd. also stood attached as that property was one listed in IA.29/96 and therefore, the advertisement dated 22.1.99 for sale in regard to the said property issued by Prabjot Singh, son of Tejwant Singh was in violation of orders of this Court. Contempt notices were issued to Sri Prabjot Singh and his wife Harpreet Kaur.

On 5.4.99, Ms. Harpreet Kaur appeared but not her husband, Mr. Prabjot Singh. Directions were issued to the police to take steps for production of Prabjot Singh in this Court. On the same day, it was contended by purchasers of proposed construction at Barakhamba that the monies collected from them by Skipper Towers Ltd. and Skipper Sales Pvt. Ltd. were diverted for the construction of the building at Jhandevalan which structure had gone back to DDA and then got sold to the purchaser Banganga (Videocon).

On 3.5.99, Sri R.K. Jain, learned senior counsel appeared for Sri Prabjot

A Singh. His client was arrested by police. Counsel took time to come forward with a scheme. Counsel for Mr. Tejwant Singh and his wife were also directed to come forward with a scheme.

By affidavit dated 6.5.99, Mr. Prabjot Singh gave a list of properties held by him, list of 'Skipper' properties held by his father Tejwant Singh and by B his brother Prabhjit Singh. On 10.5.99, all these properties were attached, without prejudice to any subsisting attachment orders passed earlier. Prabjot Singh's undertaking was also recorded.

On 19.7.99, this Court observed that issues relating to the further claims C of Skipper against DDA would be decided taking into account the contention of DDA that the land and structure vested in DDA "free of all encumbrances" and also the contention that these matters were already concluded and became final on 6.5.96.

On 2.8.99, learned *amicus curaie* filed a list of issues which by then D crystalised for decision. The disputes relate to (1) claims relating to Jhandevalan property (2) 22, Barakhamba, (3) Technology Park and (4) Symphony. This Court indicated that a fresh reference would be made to another Commission regarding the various claims of purchasers which were not adjudicated by Justice R.C. Lahoti and Justice O. Chinnappa Reddy Commissions. It was pointed out that in relation to Barakhamba property, suits were filed in the E Delhi High Court for specific performance and decreed and appeals were filed by both sides before the Division Bench.

On 2.8.99, this Court passed orders that a comprehensive list of properties be prepared. Details of winding up proceedings pending against Skipper Builders (P) Ltd. in the Delhi High Court who were concerned with Symphony F were also to be furnished. Notice was given to Ghaziabad Development Authority with regard to land of Technology Park Ltd.It was made clear that claims rejected on merits (i.e. otherwise than on limitation) by Justice Lahoti and Justice Chinnappa Reddy would not be re-opened. On 13.9.99, counsel were requested to prepare a final list of issues presently arising and the G matters were directed to be listed for hearing on these issues.

On 28.10.99, this Court attached certain Bank Accounts of Technology Park. On 2.11.99, a further list of Bank accounts of Prabjot Singh was filed and those accounts were also attached. Mr. Prabjot Singh was directed not to enter into any real estate transactions without informing the Court. This order H was passed because of serious complaints that Mr. Prabjot Singh was making

sales even after attachment orders. The Banks were directed to give a list of transactions in the last 5 years. In regard to attachment of Bank accounts of Sri Tejwant Singh, this Court held that they were already attached before 6.5.96. A contention was raised by Sri M.L. Verma, learned senior counsel appearing for Mr.Tejwant Singh that the attachment of Bank accounts was not specifically confirmed in the order of this Court dated 6.5.96 and must be deemed to have been vacated. This Court held that that attachment was not vacated by the final orders dated 6.5.96. This Court called upon Shri Tejwant Singh to give a list of Bank accounts in his name, sons and unmarried daughters and directed no withdrawals be made and further directed that no real estate transactions could be undertaken without permission of the Court.

On 4.11.99, this Court heard counsel on various issues (to which reference will be made in Part C) and reserved judgment. This Court also issued notice to the Banganga Company (Videocon) which purchased Jhandevalan land and structure from DDA. This Court proposed transfer of appeals pending in Delhi High Court to this Court in relation to Barakhamba property.

PART C

Having narrated the events which took place as above, we shall now refer to some of the issues which have crystallised. We have heard the submissions of the learned Amicus Curaie Sri Joseph Vellapally and Sri Dayan Krishnan, assisting the Amicus Curaie. We have heard Sri Mukul Rohatgi, learned Additional Solicitor General and Ms. Kamini Jaiswal for DDA, Sri M.L. Verma, Senior Advocate for Skipper, Sri R.K. Jain, Senior Advocate for Mr. Prabjot Singh, Lt. Col. Jaswant Singh (in person) and various others.

A question has arisen whether in respect of the structure at Jhandevalan which vested in DDA and which DDA sold to Banganga (Videocon), DDA should be directed to deposit something more in addition to Rs.16.75 crores deposited by it. DDA says that that issue has become final by judgment dated 6.5.96 and cannot be reopened. On the other hand, it has come to light that the purchasers were not co-nominee parties to the suit by Skipper against DDA which was transferred to this Court and was registered as SLP(C) No.21000/93. For the present, we do not propose to go into this question as to whether the judgment of this Court dated 6.5.96 has become final or is not binding on those who purchased from Skipper Construction Co. on the ground of their not being parties to the above suit and Special Leave petition. However, we shall take up this question at a later point of time.

A Learned counsel made submissions on the following issues:

(1) Whether the purchasers under agreements in respect of Jhandevalan property have a statutory charge in view of Section 55(6)(b) of the Transfer of Property Act -against the vendor's interest in the property? Whether such charge can be enforced against any substituted security?

B

(2) Whether the purchasers are entitled to interest under Section 55(6)(b) of the Transfer of Property Act and also in view of the observations made in the judgment of this Court dated May 6, 1996?

(3) Whether the period of limitation for enforcing claims by the purchasers C would be 12 years under the Limitation Act?

(4) Whether in view of the words 'subject to a contract to the contrary' used in Section 55(6)(b) of the Transfer of Property Act and in view of the term in the agreement of sale that Skipper will not be liable for interest, the purchasers cannot claim interest?

D

(5) Whether the purchasers can rely on the finding of 'fraud' given by this Court in its order dated 15.1.1995 to contend that the claim for interest is sustainable because of fraud by Skipper on the purchasers?

POINS 1 and 2:

E

These points depend upon the effect of the provisions in Sub-clause (6) of Section 55 of the Transfer of Property Act. That Section starts with the words "In the absence of a contract to the contrary", and reads thus (insofar as it is material for our purpose):

F "Section 55 (6)(b): The buyer is entitled

(a) .....

(b) unless he has improperly declined to accept delivery of the property, to a *charge* on the property, as against the seller and all persons G claiming under him, to the extent of the *seller's interest* in the property, for the amount of any *purchase-money* property paid by the buyer in anticipation of the delivery and for *interest* on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its H rescission".

It is plain from the above provision that, in the absence of a contract to the contrary, the buyer will have a charge on the seller's interest in the property which is the subject matter of the sale agreement insofar as the purchase money and interest on such amount are concerned, unless the buyer has improperly declined to accept delivery. The charge is available against the seller and all persons claiming under him. This charge in favour of the buyer is the converse of the seller's charge under Section 55(4)(b). The buyer's charge under this Section is a statutory charge and differs from a contractual charge which a buyer may be entitled to claim under a separate contract (Chettiar Firm Vs. Chettiar) (AIR 1941 P.C. 47). No charge is available unless the agreement is genuine. (T.N. Hardas Vs. Babulal) (AIR 1973 SC 1363). As pointed out in Mulla's Commentary on Transfer of Property Act, 8th Ed. (P.411), the charge on the property under Section 55(6)(b) is enforceable not only against the seller but against all persons claiming under him. Before the amending Act of 1929, the words 'with notice of payment' occurred after the words "all the persons claiming under him". These words were omitted as they allowed a transferee without notice to escape. After the Amendment of 1929, notice to the purchaser has now become irrelevant.

When the property upon which the charge is created gets converted into another form, the buyer will be entitled to proceed against the substituted security. This is a general principle of law and Section 73 of the Transfer of Property Act is only an example of the said principle. The above principle has been applied to enforce mortgage on substituted securities (see *Barham Deo Prasad* v. Tara Chand (1913) 41 I.A. 45 (PC) and *Muniappa* v. *Subbaiah,* AIR 1917 Mad. 880. The same principle which is applicable to mortgages applies to cases of statutory charge under Section 55(6)(b). If immovable property is charged and is converted into another property or money, then the charge will fasten on the property or money into which the subject matter of the agreement is converted.

The above sub-section of Section 55 also makes it clear that the buyer is entitled to interest on the amount of purchase money paid. Interest is payable from the date of payment of the purchase money to the seller till date of delivery of property to the purchaser or till the execution of the sale deed, whichever is earlier. Points 1 and 2 are decided accordingly in favour of the buyers.

POINT 3:

Article 62 of the Limitation Act, 1963 (which corresponds to Article 132

A of the Limitation Act 1908) provides a period of 12 years "to enforce payment of money secured by a mortgagee or otherwise charged upon immovable property". Time runs from the date "when money becomes due".

From the above Article, it is clear that the period of limitation for enforcement of the statutory charge created under Section 55(6)(b) is 12 years
B from the date when becomes due and not 3 years. The period remains the same even for enforcement of the charge on the substituted security. Point 3 is decided accordingly.

POINTS 4 and 5:

C

Learned senior counsel for Skipper, Sri M.L. Verma contended that there is a stipulation in the agreement of sale that interest will not be payable to the buyer in case the transaction fails for any reason.

On the other hand, Sri Dayan Krishan for the learned *Amicus Curiae*
D submitted that in view of the earlier finding of this Court relating to 'fraud' on the part of Skipper, it is not permissible for Skipper to rely on the above clause in the agreement.

In our view, learned *Amicus Curiae* is right in his submission that in the order of this Court dated 15.1.1995, there is a clear finding of 'fraud' against
E Skipper. This is because, when the available units of accommodation are said to be 870 or less, Skipper had given bookings in favour of 2700 buyers and collected huge sums. This was obviously fraudulent.

In our view, builders are not in law supposed to enter into agreements with more number of buyers than there are flats, unless each of the buyers
F in excess of the number of available units of accommodation is put on notice that his purchase will depend upon the availability of units of accommodation. Accepting bookings from excess number of buyers without adequate notice to them about the contingent nature of their contracts cannot be said to be fair dealing. On top of that to say, that these amounts paid by the buyer will
G not carry interest, is wholly unconscionable. In this case, Skipper entered into a large number of bookings, nearly three times the available units of accommodation and collected monies. This was fraudulent, as per the earlier finding of this Court dated 15.1.95. Skipper, therefore, cannot be allowed to rely upon the term relating to 'contract to the contrary' and escape the payment of interest. Once there is fraud, the inducement for payment by the
H purchasers cannot be traced to the agreement.

We may also point out that in the judgment of this Court dated May 6th, 1996, this Court has already observed, that interest is payable to both pre 29.1.91 and post 29.1.91 purchasers. This Court held in regard to pre 29.1.91 purchasers as follows: (See p. 643 of SCC).

> "On one hand, the position is that the pre-29.1.1991 purchasers have to be reimbursed in full which means that they should also be paid interest at the appropriate rate on the amounts advanced by them to skipper..."

In regard to post 29.1.1991 also, it has been stated (p.644 of SCC).

> "Secondly, the post 29.1.1991 purchaser, have also to be reimbursed in full."

A point was raised on behalf of DDA that inasmuch as DDA had given paper publication after 29.1.1991 warning purchasers, it must be presumed that all the members of the public were put on notice and post 29.1.91 buyers should not be allowed to claim interest. We have given due consideration to this contention. As to what extent any of these buyers had notice of the paper publication, is a matter on which it is difficult to get evidence. We are, therefore, not inclined to reconsider the decision of this Court dated May 6th, 1996 in regard to the right of the post 29.1.1991 purchasers to get interest. Points 4 and 5 are decided against Skipper.

We disposed of points 1 to 5 accordingly.

A.K.T. Petition disposed of.