J&K STATE CONSUMER DISPUTES REDRESSAL COMMISSION, JAMMU

C.C.: 3145 OF 2010
DT OF INSTITUTION: 11/03/2010
DATE OF DISPOSAL: 17/07/2026
Case Title:

S.C. ASSOCIATES, ENGINEERS & CONTRACTORS, 84- DEWAN NIWAN, PANJTIRTHI JAMMU THROUGH SH. SUBASH CHANDER PANDOH S/O LATE SH. BISHAN SAROOP PANDOH

--- COMPLAINANT

Versus

1. **JAMMU & KASHMIR BANK, THROUGH ITS CHAIRMAN, REGISTERED OFFICE, M A ROAD, SRINAGAR 180 001, JAMMU & KASHMIR**
2. **BRANCH MANAGER, JAMMU & KASHMIR BANK, GUJJAR MANDI, RAJOURI.**
3. **M/S FAZAL REHMAN THROUGH ITS PARTNER MUJIB UR REHMAN DAR, REGISTERED OFFICE WARD NO. 2, NEAR L.I.C. BUILDING, RAJOURI**

--- OPPOSITE PARTIES

Coram:
Smt. Nighat Sultana, President (O)
Sh. Maheep Gupta, Member

PARTIES REPRESENTED BY:
Adv. RAHUL NANDA, Ld. Counsel for the complainant.
Adv. SUBODH JAMWAL. Ld. Counsel for O.P. 1 & 2
Adv. SHEIKH ZULFIKAR AHMED, Ld. Counsel for the O.P. 3.

17/07/2026 PER: MR. MAHEEP GUPTA, MEMBER.

1. The Complainant is before us with the grievance that he had two FDRs (Detailed below) for a cumulative sum of Rs.12.25 Lakhs that would carry a

cumulative maturity value of Rs.13,76,917/- which were credited by the O.P. Bank to the third-party account of O.P. 3.

The details of the F.D.R.s is as under:

Details of FDRs

F.D.R. No.	Amount Deposited	Dt. of Deposit	Dt. of Maturity	Maturity Value
113280	4,00,000/-	16/06/2005	16/09/2007	4,49,605/-
113281	8,25,000/-	16/06/2005	16/09/2007	8,27,312/-
Total	**12,25,000/-**			**13,76,917/-**

It is claimed by the Complainant that the fact of transfer of maturity proceeds to some other account came to his knowledge only on through letter No. 252 dated 21/05/2008 written by the bank to him in response to his letter dated 16/05/2008 requesting for payment against the maturity proceeds through a Demand Draft payable at Jammu.

The text of the letter No. 252 dated 21/05/2008 written by the bank is reproduced below:

M/s S.C. Associates
Engineers & Contractors
84, Diwan Niwas
Panjtirthi, Jammu Tawi (J & K)

Sub.: FDR 1113280 & 1113281 DT. 16.06.2005 amounting to Rs. 4.0 Lakhs & Rs. 8.25 Lakhs respectively.

Dear Sir,

Please refer your letter No. SCA/JKB/RAJ-05 dated 16.05.2008 regarding the subject cited above. In this context we hereby submit that as per your agreement with M/s Fazal Rehman Dar and Sons Construction Corporation, the amount of above mentioned FDRs were issued in favour of you by raising overdraft from the account of M/s Fazal Rehman Dar and Sons Construction Corporation.

The amount after the maturity of FDRs already stands credited to the account of M/s Fazal Rehman Dar and Sons Construction Corporation along with interest on 22.09.2007.

You are requested to contact your partner M/s Fazal Rehman Dar and Sons Construction Corporation in this regard.

Yours faithfully,
Branch Head

2. The case of the O.P. Bank on the other hand is as under:
    i. That the Complainant & O.P. 3 had approached the bank for providing bank guarantee to PWD on behalf of the Complainant in lieu of the performance guarantee for the contracts awarded to complainant by PWD.
    That the funds for preparing the aforesaid F.D.R.s were provided by O.P. 3 through two different cheques viz., cheque No. 7348242 dt. 16/06/2005 for Rs. 4.00 Lakhs & cheque No. 7348241 dated 16/06/2005 for Rs. 8.25 Lakhs respectively issued from C.D. A/C No. 330 pertaining to O.P. 3, M/S Fazal Rehman Dar & Sons.
    ii. That not only the proceeds for preparing the FDRs were debited from the A/C of O.P. 3 but the bank charges required for preparing the Bank Guarantees were also debited from the account of the O.P. 3.
    iii. That the cheques were duly endorsed by the Complainant by way of duly signed endorsement on the back of the cheques under question.
    The text of the endorsement purportedly made by the complainant on the back side of the cheques reads as under:
    "Kindly issue FDR favouring M/S S.C. Associates Engineers and Contractors, Diwan Niwas Panjtirthi Jammu as security of BG. After release of BG FDR to be credited to the parent account of
    Sd/-"
    iv. That the complainant also provided a written mandate through a letter duly signed by him dated 16/06/2005 (the very same day on which the F.D.R. was prepared) on the official letter head

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of his firm authorizing the bank to credit the maturity proceeds of the F.D.R.s to the A/C of O.P. 3.

The text of the said letter dt. 16/06/2005 is reproduced below:

"Dated: 16/06/2005

The Branch Manager,
The J&K Bank Ltd.
Gujjar Market Rajouri.

SUBJECT: ISSUANCE OF BANK GUARANTEES
Sir,
Kindly issue me two guarantees to the tune of Rs. 4 Lacs and Rs. 8.25 Lacs by taking security of these Bank Guarantees from the account of M/s Fazal Rehman Dar & Sons Construction Corporation.
I hereby undertake that after the expiry of Bank Guarantees the security of these bank guarantees may be released in favour of M/s Fazal Rehman Dar & Sons Construction Corporation and credit to the parent account & I shall have no charge on the securities kept against these guarantees.
Thanking you.
Sincerely Yours
S.C. Associates
Engineers & Contractors

Copy to:
M/s Fazal Rehman Dar Ward No. 2, Rajouri."

v. That at the time of the maturity of the F.D.R.s the bank was approached by O.P. 3 (M/S Fazal Rehman Dar & sons) who requested in writing to credit the Maturity Proceeds of the F.D.R.s under question to his C.D. A/C No. 330 (the same account from which the funds were sourced for preparing the F.D.R.s).

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That the bank acted upon the written request of O.P.3 and credited the maturity proceeds to his account duly backed by the written mandate by the complainant in the shape of endorsements made by him on the back side of the cheques used for preparing the F.D.R.s & the authorization letter dated 16/06/2005 (as referred above).

vi. That the Complainant had lodged a complaint with the Banking Ombudsman as well on the same issue which was decided by the Ombudsman in favour of the Bank vide its letter No. 330:24:BKR:7249/08-09 dated 03/11/08.

vii. That the bank had committed no irregularity and had acted upon the written mandate of the Complainant and its action has already been upheld/ validated by the Banking Ombudsman as such no case is made up against the bank and the Complaint needs to be dismissed outrightly.

3. Heard the Counsels, Perused the records and the written submissions made by the parties.

4. Before we proceed further, we deem it necessary to mention that the O.P. 3 was not originally arrayed in the list of O.P.s and it is at the later stage on 21/11/2012 that O.P. 3 was impleaded as a necessary by the orders of this Commission.

   It is further observed that Sh. Mujeeb – Ur – Rehman, partner in the partnership firm “M/S Fazal Rehman Dar” caused presence on 06/09/2013 and chose not to file any written statement as no specific allegation was levelled against O.P. 3 neither any specific relief was claimed from O.P. 3, but he filed an affidavit instead containing the averments more or less in line with the stand taken by the bank.

   The Counsel for O.P. 3 also filed his written arguments which have been duly considered by us.

5. Whilst arguing the case, Counsels for the Complainant and O.P. Bank more or less reiterated their respective stands.

   Ld. Counsel for the complainant, however, feigned ignorance about any endorsement &/or letter dated 16/06/2005 and vehemently denied having written/ signed either the endorsement or the purported letter.

He also claims that the issue of the endorsement was never highlighted by the O.P. bank earlier during the pendency of his complaint with the Ombudsman and it is for the first time that the issue has been highlighted by the O.P. Bank in its written statement filed before this Commission.

He further claimed that that the issue of the alleged letter dated 16/06/2005 alleged to have written by him to the O.P. Bank came to his notice for the very first time on 17/10/2008 when the copy of the letter No. COMP/OMB/2008-416 dated 03/10/2018 written by the Compliance Department of the Bank to the Banking Ombudsman in rebuttal to the complaint of the Complainant before the Ombudsman was forwarded to him by the Ombudsman.

Per Contra, the Counsel for the O.P. Bank contended that the Complainant was very much aware of the endorsement as well as the letter in question from the very beginning and has deliberately and cleverly suppressed the fact with the malicious intent to malign the reputation of the O.P. bank and to extract undue benefit by abusing the process of law.

6. Ld. Counsel for O.P. 3 inter-alia argued that this Commission lacks the jurisdiction to entertain this Complaint on the following grounds:
    i. The Complainant had availed the services of the O.P. bank for commercial purposes and as such falls outside the purview of the definition of the term “Consumer”.
    ii. This is a case involving complex facts and deep investigation in the alleged forgery of some documents & as such this Commission being a summary court lacks the power to entertain the instant complaint.

He also cited the Judgments passed by Hon’ble Supreme Court in the case title, “Sant Rohidas Leather Industries and Charmakar Development Corporation Ltd. V/S Vijaya Bank [2026 INSC 264 decided on 19/03/2026] & “Lilavati Kirtilal Mehta Medical Trust V/S Unique Shanti Developers” [2020 2 SCC 265] to buttress his stand on the issue of definition of the term “Consumer”.

To substantiate his stand on the issue of complexity of the case, he sited the judgments passed by the Hon’ble Supreme Court in the case title, “Sant Rohidas Leather Industries and Charmakar Development Corporation Ltd.

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V/S Vijaya Bank [2026 INSC 264 decided on 19/03/2026], "Ravneet Singh Bagga v. KLM Royal Dutch Airlines, [2020 1 SCC 66] & "Chairman & M.D., City Union Bank V/S R. Chndramohan [2023 7 SCC 75].

7. Now since the arguments advanced by the O.P. 3 involve the question of maintainability of the complaint as well, we shall first determine the issue of the maintainability of the Complaint with this Commission.

   It is not under dispute that the service was availed for a commercial purpose and the complainant is precluded from the definition of the term consumer as per provisions of the Consumer Protection Act 1986.

   We must, however, should not loose sight of the fact that the present complaint was filed by the complainant under "Jammu & Kashmir Consumer Protection Act 1987" and shall have to be dealt as per the provisions of Act of 1987.

   We deem it advantageous to make a comparative study of the definition of the term "Consumer" under the "Consumer Protection Act 1986" and the "Jammu & Kashmir Consumer Protection Act 1987"

   The term "Consumer" has been defined in the respective Acts as under:

CPA 1986	**JKCPA 1987**
"consumer" means any person who—	"consumer" means any person who—
(*i*) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or	(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised partly paid or partly promised or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
	(ii)[1][hires or avails of] any services for a consideration which has been paid or

(*ii*) [1][hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [1][hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [2]<u>[but does not include a person who avails of such services for any commercial purpose].</u> 1. Subs. by Act 50 of 1993, s. 2, for "hires" (w.e.f. 18-6-1993). 2 Ins. by Act 50 of 1993, s. 2 (w.e.f. 18-6-1993).	promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [1][hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person; 1. Subs. by Act XIX of 1997, s. 2, for "hires" (w.e.f. 2-6-1997).

A careful analysis/comparison of the definition of "Consumer" under both the acts would reveal as under:

a. As far as transactions/disputes involving "goods", both the Acts speak in same voice & under both the Acts any disputes involving goods procured for resale or commercial purposes undisputedly fall out of the purview of both the Acts since the very inception.

b. **However, when we come to the "service disputes" the exclusionary part of "Commercial purpose" was not there in both the acts when the original acts were notified.**

   It is only by virtue of amendment carried out by Act 50 of 1993 that this exclusionary provision was introduced in the Act of 1986 w.e.f. 18/06/1993.

   It is further to be noted that by the same Act 50 of 1993 the original phrase "hires" was substituted by the phrase "hires or avails" in the Act of 1986.

   Whilst the corresponding amendment as far as substitution of the phrase "hires" with the phrase "hires or avails" was made effective w.e.f. 02/06/1997 in JKCPA 1987 through Act XIX of 1997, no

corresponding amendment was made in respect of exclusionary provision of "commercial purpose".

We are, therefore, of the concerned opinion that whilst the disputes involving "hiring/ availing of services" clearly fall under the exclusionary provision under Act of 1986 w.e.f. 18/06/1993, however, in absence of any enabling exclusionary provision under JKCPA 1987 all the disputes related to services regardless of the purpose for which the service under question was hired/availed shall continue to be maintainable under Jammu & Kashmir Consumer Protection Act, 1987.

As far as the issue of the complexity of the case is concerned, we are of the concerned opinion that it is the sole prerogative of the bench to decide.

We do not find the case to be complex enough as would warrant not to be entertained by us.

Held: The Complainant falls within the definition of the term Consumer as per the definition provided in "Jammu & Kashmir Consumer Protection Act, 1987". The case is not complex enough to not to be entertained by us. Complaint is maintainable.

8. Having held the dispute to be maintainable with this Commission, now we shall come to the arguments resting on merits of the case.
9. The broader issues that we need to determine are as under:
    i. Whether the issue of endorsement on the back side of cheque was raised for the first time by the O.P. Bank in its written statement & was never raised before the Banking Ombudsman?
    ii. Whether the endorsement on the back side of the cheque & the letter dated 16/06/2005 were actually furnished by the Complainant?
    iii. Had the bank committed irregularity by relying on the endorsement on the back side of the cheque, letter dated 16/06/2005 by the complainant & the request letter for release of funds submitted by O.P. 3 at the time of the maturity of the F.D.R.s?

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iv. If the answer to issue number iii. is in affirmative, what should be the Compensation that needs to be awarded in favour of the Complainant?

10. Now we shall proceed to tackle all the issues one by one:

i. **Whether the issue of endorsement on the back side of cheque was raised for the first time by the O.P. Bank in its written statement & was never raised before the Banking Ombudsman?**

To determine this issue, we deem it advantageous to refer to some of the documents/ communications exchanged between the Complainant, O.P. Bank & the Banking Ombudsman:

A. **Statement of facts as annexed by the Complainant with his Complaint filed with the Banking Ombudsman.**

That applicant is a registered partnership firm (copy enclosed).

The applicant / complainant got two FDR's issued from Gujjar Market Raiouri Branch of J&K Bank for Rs. 4,00,000 (Four lac) and Rs. 8,25,000 Eight lac twenty five thousand) on 16.06.2005 for a period of 27 months and the same became due on l6.09.2007 (copies enclosed).

That the FDRs duly discharged were given as margin money to the bank for issuance of bank guarantees.

That the complainant/applicant firm requested the bank to issue intt accrued certifcate on FDR's for the year 2007- 2008.

That the reply received from the bank (copy enclosed) strangely sent an interest paid statement.

That as the complainant had not received the proceeds of FDRs in their a/c, therefore they vide letter of i6.05.08 (copy

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enclosed) requested the bank to remitt the proceeds by bank draft payable at Jammu.

That to their utter dismay and disbelief, the bank vide their letter dt 21.05.08 informed that the proceeds of the said FDRs have already been credited to the a/c of M/s Fazal Rehman Dar & Sons construction corporation (copy enclosed).

That the above act of the bank is in blatant violation of their contractual liability and also in violation of banking law and practice besides being against instruction issued by Reserve Bank of India from time to time regarding payment of term deposits. The act is also without an authority.

That aggrieved by this act of the branch, the complainant firm issued a notice to the bank through their Advocate for payment of proceeds of FDRS (copy enclosed).

That the bank in their reply has again refused to make the payment and havė advanced untenable and unacceptable reasons.
That the term deposit being NON-TRANSFERABLE, NON-NEGOTIABLE instrument under all circumstances has to be credited to the a/c of complainant which is a registered partnership firm.
That the complainant has thus suffered loss at the hands of the Bank, and hence this complaint.

B. <u>Letter No. COMP/OMB/2008-416 dated 03/10/2018 written by the Compliance Department of the Bank to the Banking Ombudsman in rebuttal to the complaint of the Complainant.</u>

Compliance
COMP/OMBI2008- 416

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The Deputy Secretary,
Banking Ombudsman,
2nd Floor,
Reserve Bank of India Building,
6 Parliament Street,
New Delhi.

October 03,2008

Sir,

<u>M/s S.C.Associate v/s our Branch Guijar Market Rajouri</u>
With reference to your letter BO.NO: 330:124:BKR: 2746/08-09 dated August 18,2008 we hereby submit as under:
1. That the complaint is legally as well as factually misconceived, therefore, liable to be dismissed. The complainant has resorted to concoction to mislead this Hon'ble Authority. It is denied that the complainant got two FDRs issued from Gujjar Market, Rajouri branch of J&K Bank for Rs.4.00 lacs and Rs.8.25 lacs. As a matter of fact the FDRs in question were issued by J&K Bank Gujjar Market branch on the written request and mandate of M/s.Fazal Rehman Dar and Sons, which tendered two cheques bearing No. 7348241 and 7348242 for Rs.8.25 lacs and Rs.4.00 lacs respectively with the request to issue two FDRs in favour of the complainant. The amount of said FDRs was debited to the CD A/c no. 330 of M/s. Fazal Rehman Dar. Over-draft to the tune of Rs.4,65,192 was allowed on 16.6.2005. The said M/s. Fazal Rehman Dar consented that the FDRs be taken as security for Bank Guarantees which the bank was going to issue, as per Conplainant's instructions, to Commissioner / Secretary to Govt. PWD (R&B) Jammu on behalf of the Complainant.

2. That subsequently vide letter dated 16.6.2005, addressed to the concerned Branch Head, the Complainant requested for two Bank Guarantees against the security of FDRs in question prepared out of the proceeds of account of M/s.Fazal Rehman Dar and Sons. It is further submitted that by virtue of said letter the complainant had stated that after the expiry of bank guarantees, the FDRs be released in favour of M/s. Fazal Rohman Dar and Sons and that it shall have no charge on securities kept against the guarantees.

3. That the bank guarantees after expiration were closed in the books of the bank and related securities which included FDRs in question, were released as per written mandate of the parties involved.

4. That the complainant was not entitled to the proceeds of FDRs, therefore, its letter dated l6.5.2008 was not tenable.

5. That the proceeds of FDRs in question have been credited to the account M/S Fazal Rehman Dar and Sons in accordance with the mandate/instructions received from M/S S.C.Associates vide their letter dated 16.06.2005(copy enclosed)

6. That respondent vehemently denies that there has been any 'violation by bank of its "contractual liability or any violation of "Banking Law and Practice" as alleged. The respondent bank has acted in the natter in accordance with the law governing the subject and by following the norms. It is also denied that the action of the bank is without any authority. The bank has acted in the matter fairly and as per law and banking norms.

7. Sir That with regard to notice received from the advocate of the complainant, it is submitted that the bank, copy, replied the same whereof is enclosed.

8. That the claim of the complainant that Term Deposits had to be credited to its account is misconceived in view of the peculiar facts and circumstances of the case as narrated

hereinabove. It is reiterated that the payment orders were issued from the M/s Fazal Rehman Dar & Sons and therefore the complainant has no claim over the said amount. Further the letter of the complainant dated 16.6.2005 (copy enclosed) clearly supports the stand of the respondents.

9. That it is denied that the complainant has suffered any loss at the hands of the bank and therefore, the complaint merits dismissal.

In the premises, it is therefore, prayed that the complaint may kindly be dismissed with exemplary costs against the complainant and in favour of the answering respondents.

Yours faithfully,

(Nazir Ahmed Khan)
Executive Manager

C. Rebuttal by the Complainant of the stand taken by the bank.

Complainant's letter No. SCA/JKB-R7 dated 29/10/2008 written by the Complainant to the Banking Ombudsman.

The Secretary,
Banking Ombudsman,
Reserve Bank of India, 2d Floor,
6- Parliament Street, New Delhi-110001.
Ref: B.O. -No. 330:124: BKR:6398/08-09, dated 17-10-2008.
(Complaint No. 200809008871, dated 30-07-2008).

Dear Sir,

The reply submitted by the Executive Manager, Corporate Head Qrs., J&K Bank Ltd., Srinagar, is not based on facts. We are a registered firm and at no

point of time, have issued any letter authorizing the Bank to release Term Deposit Receipts in favour of M/s. Fazal Rehman Dar & Sons. It is admitted that Mr. Fazal Rehman Dar had temporarily helped us in making the Term Deposit but that would not give any authority to the Bank to credit the amount of Term Deposit Receipts to the account of M/s. Fazal Rehman Dar & Sons. The transaction between us and our creditors (Mr. Fazal Rehman Dar included) are purely private transactions, where Banks have no role to play.

It is a substantive law that all proceeds in the case of registered firm are to be credited in the firms account and the amount cannot be diverted in any manner to another account.

A Term Deposit issued by the Bank is non-negotiable / non-transferable document and has to be credited to the account of the firm whose name have been shown on the said Term Deposit document. The Bank has not only forged the letter to save their skin but have also gone against the mandate of banking law and practice.

Sir, the matter being of very grave nature, it is requested that a thorough probe in the matter is conducted and the complainant firm deprived of hard earned money be paid the amount of Term Deposit Receipts alongwith upto date interest and any other relief the hon'ble ombudsman deems fit in the circumstances of the case,

Yours sincerely

(S.C Pandon)
Mg. Partner

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D. **<u>Letter No. 330:24:BKR:7249/08-09 dated 03/11/08 by the Banking Ombudsman (Final Disposal of Complaint)</u>**

***"M/s S. C. Associates
84 Diwan Niwas
Panj Tirthi
Jammu(J&K)***

Dear Sir

***Complaint No. 200809008871
Jammu & Kashmir Bank Ltd. Gujjar Market, Rajouri***

In your Complaint, you stated that you got issued two FDRs from the above bank for Rs.4 lakh and Rs.8.25 lakh on 16 June 2005 for 27 months, which became due for payment on 16 September 2007. These FDRs were submitted to the bank duly discharged as margin money for certain guarantees. But the bank had not paid the proceeds to you on maturity instead informed vide letter dated 21 May 2008 that the proceeds of these FDRs have already been credited to M/s Fazal Rehman Dar & Sons Construction Corporation. You claimed the payment of the FDRs.
The bank submitted that the FDRs were issued against the cheque Nos.7348241 and 7348242 issued by M/s Fazal Reham Dar by allowing overdraft to their account on 16 June 2005 against the written request of that firm, who consented to keep these FDRs as security against Bank Guarantees issued in favour of The Commissioner/Secretary of Govt., P.W.D.(R&B), Jammu on your behalf. You also gave an undertaking on 16 june 2005 to release these securities in favour of M/s Fazal Rehman Dar and credit to their account. You also disclaimed any charge on these securities. Accordingly, on closure of the guarantees, the FDRs were

released and credited to the account of M/s Fazal Rehman Dar and Sons.

Taking into consideration all the facts, allegations made by the complainant, bank's submission and having been guided by the evidence placed by the parties, principle of Banking Law and Practice. directions, instructions and guidelines issued by Reserve Bank of India from time to time, it is observed that the bank had acted as per your written undertaking dated 16 June 2005. Thus, as we do not find that the complainant had suffered any loss or damage on account of any deficiency in banking services, we have closed the complaint under clause 13(f) of the Banking Ombudsman Scheme, 2006 (amended).

We may add that Banking Ombudsman is only an alternate forum for redressal of grievances related to deficiencies in services of banks and you may approach any other forum for redressal of your grievances, if you so desire. This has the approval of the Banking Ombudsman.

Yours faithfully,

(P.Shimrah)
Secretary

From the perusal of the aforesaid communication read with the letter No. 292 dated 21/05/2008 (referred to in para 1 of the order), it is clear that the issue of the alleged endorsement on the back side of the cheques was never raised by the bank when the matter was first taken up by the Complainant with the Bank. It is also clear that the same was not even raised before the Banking Ombudsman.

We, therefore, have no hesitation in concluding that the issue was raised by the bank for the first time in the written statement filed by it.

It may not be out of context to mention here that we have no reasons to disbelieve that the Complainant came to know of the credit of proceeds to some other account only through the letter dt. 21/05/2008 written by the bank to him (as referred to in para 1 of the order) and he immediately took all the necessary steps to safeguard his interest.

ii. **Whether the endorsement on the back side of the cheque & the letter dated 16/06/2005 were actually furnished by the Complainant?**

From the perusal of the records, we find that the written statement was filed by the O.P. Bank on 27/04/2010 and the Complainant filed a rejoinder affidavit on 28/06/2010 categorically denying therein having signed/ furnished the endorsement &/or the letter dated 16/06/2005.

It is further observed that he also placed on records a forensic report by some Pt. Ashok Kashyap claiming to be a forensic expert concluding that the letter dated 16/06/2005 has been forged and has been signed by someone else.

A valid objection was raised by the O.P.s to not to take cognizance of the said report arranged by the Complainant on his own through a private agency. The objection raised by the O.P. bank was considered favorably by us and a fresh forensic examination to be conducted through the Govt. Forensic Lab, Jammu was ordered by us.

Original copy of the letter dated 16/06/2005 was called from the bank and was sent to the forensic laboratory along with the admitted signatures and fresh specimen signatures of the complainant for its examination.

The report was received and again it was conclusively held that the letter is forged and signed by someone else.

The author of the report was duly examined by this Commission & cross-examined by the O.P.s

Not only did he testify the contents of the report, nothing adverse could also be extracted through the cross-examination.

In the light of the Forensic Report, we are of the considered opinion that the letter being relied upon by the bank is a forged one and as such cannot be relied upon.

We may also add here that we have consciously not subjected the endorsement to the forensic examination as the issue was raised for the first time by the O.P. bank at the time of filing the written statement.

The fact that the endorsement on the back of the cheque is valid only in regard to the handling/ appropriation of that particular instrument and cannot be applied for any future event also influenced our decision to not to subject it to cross-examination.

iii. **Had the bank committed irregularity by relying on the endorsement on the back side of the cheque, letter dated 16/06/2005 by the complainant & the request letter for release of funds submitted by O.P. 3 at the time of the maturity of the F.D.R.s?**

It is an admitted case of the complainant that the funds used for preparing the FDRs were borrowed from O.P. 3. It is also clear that the requisite Bank Charges for preparation of Bank were also debited from the account of O.P. 3.

The factual legal position, however, is that once the F.D.R.s are prepared in somebody's name, the title automatically and immediately gets transferred to the person in whose name the F.D.R.s are issued irrespective of the source of the fund.

The transfer of the title is absolute and any future accrual of interest &/or right over the maturity proceeds shall vest with the person in whose name the FDRs were issued.

The person who had sourced the funding/ lent the money loses its right on the title of the FDRs per se, however, he retains his right as a Creditor.

The million-dollar question, under these circumstances, that needs to be answered is "Whether the banking norms provide for transferring of maturity proceeds of the F.D.R.s to some

third-party account including the source account from where the funds were drawn for preparing the F.D.R.s?"

The answer in our considered opinion is both in affirmative as well as negative depending upon the facts and circumstances as explained below:

Scenario 1: Yes, the bank can transfer the maturity proceeds to some other account on the strength of a valid mandate by the party in whose name the FDRs were issued.

Scenario 2: No, the bank cannot transfer the maturity proceeds to some other account without a proper and valid mandate by the party in whose name the FDRs were issued.

The next logical question, therefore, would be whether the bank had the proper and valid mandate from the complainant?

The answer is a clear "NO" due to the following reasons:

a. Validity of the endorsement on the back side of the cheques is only for the limited purpose of disposal/handling/appropriation of the cheques on which the endorsement was made.
b. Letter dated 16/06/2005 came up to be a forged one and cannot be relied upon.
c. Request letter for crediting the maturity proceeds to his account was signed by O.P. 3 alone and was not countersigned by the Complainant.

We, therefore, hold that the bank never had the proper mandate from the Complainant to credit of the maturity proceeds of the FDR's to the source account of O.P.3.

We hold the bank guilty of blatant violation of the established banking norms/ principles and "deficiency in service".

11. We must add here that we have overruled the objection raised by the bank as to the delay caused by the complainant in approaching the bank after more than eight months of the maturity of the FDRs as neither is there any legal binding on the beneficiary of the maturity proceeds to approach the bench immediately after the maturity date nor does it grants any right to the bank to transfer his due benefit to some other person.

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12. Having held the bank guilty of deficiency in service, we are now left with the only question of quantum of compensation to be awarded to the Complainant.

We feel that to meet the ends of justice, the Complainant not only needs to be compensated for the actual loss suffered by him, i.e., the maturity proceeds of the FDRs but also need to be compensated suitably for the opportunity loss caused by the denial of the maturity proceeds till date besides the complainant also needs to be compensated suitably for the litigation expenses that might have been spent by him during the unwarranted litigation period of almost sixteen years.

We, therefore, direct the O.P. Bank to pay Rs.34,52,629/- to the complainant as calculated below:

Particulars	**Amount**
Amount as would have been payable on maturity of FDRs	13,76,917/-
Compensation on A/C of opportunity loss caused by denial of opportunity to use the maturity proceeds in his business by the Complainant. Calculated @ 8% p.a. on Rs.13,76,917/- calculated from the next day of maturity due date, i.e., 17/09/2007 to the date of instant order i.e., 17/07/2026 – total 6878 DAYS	20,75,712/-
Compensation for litigation expenses.	50,000/-
Total	**34,02,629/-**

13. Before we part away, we must add that we have consciously refrained ourselves into the area of the payment of original debt by the Complainant to the O.P. 3 as it is a purely B to B transaction and is outside our purview.

We, however, hasten to add here that the Complainant had claimed to have paid the original debt along with interest to the O.P. 3.

Similarly, we are consciously not commenting on the recovery rights that may have been available to O.P. Bank against O.P. 3. For which again we are not the appropriate forum.

We have left both these issues open and the parties are granted the liberty to exercise their legal rights as may be available to them, before the appropriate forum.

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<u>Judgment:</u>

A. **Complaint is allowed and the O.P. Bank (O.P. 1&2) is directed to pay Rs.34,02,629/- to the complainant within 30 days of this order, failing which the O.P. Bank shall be further liable to pay interest @8% p.a. on the entire amount of Rs.34,02,629/- to be calculated from 18/07/2026 till the final deposition of the award.**
B. **Parties are at liberty to exercise any of the legal rights available to them in respect of issues left open, as per para 13 of this order, before an appropriate forum.**
C. **Parties to bear their own costs.**
D. **Office is directed to:**
   i. **Provide a certified copy of this order to all the stakeholders.**
   ii. **Serve a certified copy of this order to O.P. 3 through registered post & place the tracking report of the same in the complaint file.**
   iii. **Consign the case file to records after due compilation.**

Announced: 17/07/2026

(Maheep Gupta)	**(Nighat Sultana)**
Member, JKSCDRC	President (O), JKSCDRC

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