

Switzerland have officially approved his factory as an accredited vendor for manufacturing silk garments and they have invited, after visiting the factory, two of his skilled personnel to visit their facilities in Europe for weeks and have also given an indication that they would buy the entire production. The two letters of credit referred to earlier, were got issued by M/s. Man Silk in August and October, 1988 vide annexures 7.1. to 7.3 and 8.1 to 8.2 respectively. By freezing the Export Packing Credit and other limits in October, 1988, the Opposite Party Bank brought a young entrepreneur on the streets.

18. It may also be mentioned here that the Bank has also filed some more documents with additional submission but most of them came to the knowledge of the Bank after 1988. We have to see the conditions under which the credit facilities were frozen in the first week of October, 1988. It has already been discussed above that on 5th October, 1988 nothing stood in way of the Bank while granting advances. After the arrest of Mr. Verma on that date the Bank started finding faults with the complainant and froze the credit facilities without giving any notice. In the circumstances discussed above we have no option but to hold that the action of the Bank in freezing the credit facilities was *mala-fide*. The Bank must be held guilty of negligence and deficient in rendering banking service.

19. The next question that arises is about grant of compensation for damage/loss suffered by the complainant. He has claimed Rs. 41,65,821.80 as compensation. We are of the opinion that that the amount claimed is on the higher side. Vide letter dated 18th November, 1988 (Annexure 13 at page 88) written by the complainant to the C.B.I. Rs. 6 lakhs were said to have been lost in the consignment though it was further stated that he was losing more than Rs. 30,000/- a month due to the retrenched employees. Considering all the circumstances we think end of justice would meet if we allow Rs. 10 lakhs as compensation for loss to the complainant for the deficient service rendered by the bank.

In the light of above discussion we direct the Opposite Party - Bank to pay Rs. 10 lakhs as

compensation for the loss suffered by the complainant. The amount should be paid within two months of the receipt of the order failing which it will carry interest at the rate 15% from the date of order till payment. The complainant is also awarded costs of Rupees Five Thousand recoverable from the Opposite Party.

Mr. Y. Krishan, Member

The Opposite Party Bank had dishonoured two cheques of the complainant for Rs. 45,000/- issued on 30.9.1988 and Rs. 57,000/- issued on 26.10.1988 without reason or justification when the sanctioned credit limits had not been revoked or exhausted and he could withdraw Rs. 1.24 lakhs from the Bank in between. The Bank was therefore guilty of deficiency in service.

This deficiency in service was grave as the dishonouring of the cheques led to the operation of the factory of the complainant coming to a stand still and his business being ruined. Hence the compensation as allowed in the order above with which I agree.

Complaint partly allowed..

II (1995) CPJ 106 (NO)

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

Present: Hon'ble Mr. Justice V. Balakrishna Eradi, President; Mr. Y. Krishan & Hon'ble Mr. Justice B.S. Yadav, Members

SKIPPER TOWERS PVT. LTD. — Appellant

versus

A.P. GUPTA & 2 ORS. — Respondents

First Appeal Nos. 164, 165 & 166 of 1992—
Decided on 10.1.1995

Consumer Protection Act, 1986 —
Section 19 — "Appeal" — "Section 2(1)(d)" — "Consumer" — "Housing" — Whether a middle man or estate agent who is merely buying or selling properties for profits, is a 'consumer' vis-a-vis the seller of that

property for the reason of their (buyers) engaged in commercial activity?—(No).

Held: The Respondents-Complainants are not buyers of properties for self use (whether for residential or commercial purpose) but are merely property dealers who buy and sell flats etc. In my opinion there could be no deficiency in service under the Consumer Protection Act in relation to such buyers of properties. (Para 10)

Held further: It is established in this case that the Respondents-Complainants are only property dealers who only undertake buying and selling of properties but not enjoying them. In other words the Respondents-Complainants may be *de-jure* buyers and sellers of properties, but are *de-facto* property agents who act on behalf of the buyers and sellers and not true buyers themselves. In my opinion they are not consumers as defined under the Consumer Protection Act. The Appellant may be guilty of gross breach of contracts but for that he cannot be hauled up before Consumer Forums.

(Para 10)

Result: Appeals allowed.

Case referred :

III (1993) CPJ 7 (SC).

Counsel for the Parties :

For the Appellant: Ms. Richa Kapoor, Advocate.

For the Respondents: Mr. D.R. Gupta, Advocate.

ORDER

Mr. Y. Krishan, Member:—These are three appeals filed by the same appellant-M/s. Skipper Towers Pvt. Ltd. against the order of 26th March, 1992 in Case No. 217/91. The State Commission had also ordered that same order would dispose of cases No. 218/91 (*Smt. Savitri Devi v. Skipper Constructions & Arr.*) and 219/91 (*R.K. Gupta v. Skipper Constructions & Arr.*). Consequently I am disposing of these appeals by a common order.

2. The three respondents here, were complainants, before the State Commission and the appellant was Opposite Party. They would be referred to as such in this order.

3. The Complainants had entered into contracts with the Opposite Party in 1982 for purchase of commercial space flats/office spaces and shops in the multi-storied commercial complex, Yusuf Sarai, New Delhi which the Opposite Party was to build. For this purpose the Complainants had paid the following amounts to the Opposite Party-Builder:

1. Shri A.P. Gupta (Respondent - Rs. 2,05,200/- Complainant) in F.A. No. 164/92
2. Smt. Savitri Devi (Respondent - Rs. 2,23,398/- Complainant) in F.A. No. 165/92
3. Shri R.K. Gupta, (Respondent - Rs. 1,72,208/- Complainant) in F.A. No. 166/92

The above amounts were paid by the Complainants during 1988-1990.

4. As observed by the State Commission in its order, the shops as also commercial complex i.e. offices have not been fully constructed and the question of delivery of possession of the same to the Complainants did not arise. The State Commission, therefore, held that in these circumstances the Complainants were entitled to refund of the amount deposited by each of the Complainants.

5. In addition the State Commission awarded compensation by way of damages for breach of contracts to the Complainants. Considering the very high increase in the price of housing properties during the last one decade, the State Commission awarded damages one and half times the amount deposited viz. Rs. 3.07 lakhs in Appeal No. 164, Rs. 3.35 lakhs in Appeal No. 165 and Rs. 2.55 lakhs in Appeal No. 166.

6. The order of the State Commission has been challenged by the Appellant Opposite Party on various grounds. The principal challenge is that the Respondent-Complainants are not consumers as defined under Consumer Protection Act, that the shops and commercial spaces were to be purchased for commercial purpose and that there was no sale of goods nor was any service rendered.

7. The Appellant Opposite Party has further submitted that the Respondent-Complainants are brokers engaged in the business of purchase and sale of properties, they are prop-

agents who purchase properties at nominal price for the purpose of speculation, that they are in the business of real estate, buying and selling properties and construction and that they had also entered into various other transactions for purchase of property in other projects of the Appellant and subsequent sale thereof.

8. The State Commission has repelled the challenge by the Appellant-Opposite Party on the question of jurisdiction viz. that there has been no sale of goods nor has any service been rendered and therefore, the Appellant-Opposite Party is not liable to be arraigned before the Consumer Forums. The State Commission has cited the order of this Commission in *U.P. Avas Evam Vikas Parishad v. Garima Shukla & Etc.* in support of its decision. We may also observe that the Hon'ble Supreme Court of India by its judgment in appeal of *U.P. Avas Evam Vikas Parishad* has also upheld the order of this Commission (Civil Appeal No. 6237 of 1993 *Lucknow Development Authority v. M.K. Gupta* with S.L.P. (C) Nos. 659/91, 16842/92; C.A. Nos. 3963/89, 5534/90, 6236/90, 5257/90, 2954-59/92 decided on 5.11.93). In the result it has been held by the Apex Court that Builders of houses etc. clearly render service to the buyers in the matter of housing construction and therefore, are liable under the Consumer Protection Act.

9. The only point that has not been considered and needs to be considered is whether a middle man or Estate Agent who is merely buying or selling properties for profit, who does not buy a property for his own use or consumption, whether such a property be for a commercial purpose or not, but is buying or selling property itself and who does not enjoy that property as a buyer, can such a person be deemed to be a consumer under the Consumer Protection Act? In appreciating this question the following facts are relevant:

1. All the Respondent-Complainants in this case belong to one family and reside at the same place: W-56, G.K. II, New Delhi. One of the Complainants Shri A.P. Gupta is the son of Shri R.K. Gupta. Smt. Savitri Gupta, one of the Complainants is the wife of

Shri R.K. Gupta, and Shri R.K. Gupta himself is also one of the Complainants.

2. In the counter affidavit filed before the State Commission the Respondents-Complainants had explained as under:

"Because assuming without admitting that the respondent may be a broker and engaged in the business of sale or purchase of the properties, the bar contained in Section 2(1)(d)(i) 'But does not include a person who obtains such goods for resale or for any commercial purposes' is not applicable in this case for the simple reason that there is no contract on record between the appellant and the respondent that respondent may have booked the premises in project namely 12, C.C. Yusuf Sarai, New Delhi for the purpose of resale or for the commercial purposes that is akin to resale. However, if the buyer of a flat/shop/commercial space lets it out to the tenants the same shall not be covered by the aforesaid exception. Further it is submitted that non-delivery of possession of booked space is a merely breach of contract which is equally covered by the Contract Act and the Consumer Protection Act, 1986 is applicable."

3. The Appellant-Opposite Party has submitted evidence that the parties are only buying and selling properties. One of the Respondents-Complainants Smt. Savitri Devi had booked flat No. UB-6 on Upper Basement Floor in building No. 22 at Barakhamba Road in 1981 for Rs. 82,125/- and had sold the same to M/s. Unita World Travels in 1982 for a total sum of Rs. 1,08,375/- making profit of Rs. 26,250/-.

10. The above facts speak for themselves. The Respondents-Complainants are not buyers of properties for self use (whether for residen-

II (1995) CPJ 109 (NC)

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

Present : Hon'ble Mr. Justice V. Balakrishna Eradi, President; Mr. Y. Krishan & Hon'ble Mr. Justice B.S. Yadav, Members

UNITED INDIA INSURANCE CO. LTD.
—Appellant

versus

SMT. KUSUMBEN J. BADIANI
—Respondent

First Appeal No. 26 of 1993—Decided on 12.1.1995

Consumer Protection Act, 1986 —
Section 19 — "Appeal" — Section 2(1)(g) —
"Deficiency in Service" — "Insurance" —
"Repudiation" — Unreasonable and de-
layed repudiation — Consignment —
Shaft of vessel broken — Goods jettisoned to
save life of those on vessel — Then vessel
was towed — Claim repudiated — Delay
in — Whether amounts to 'deficiency in
service'?—(Yes).

Held: The State Commission has rightly remarked that when the Complainant booked goods the control of the vessel was of the Tandal and he could not be deemed to be an agent of the Complainant. The Complainant has to accept whatever was reported to her unless the Insurance Company prove it otherwise. If the Insurance Company was to take the advantage of the exclusion clause the burden to prove that the said clause was applicable in the present case, was upon the Insurance Company. Sri D.H. Chary who has filed an affidavit on behalf of the Insurance Company has no personal knowledge of the incident. In such circumstances we do not find any ground to disbelieve the facts stated by the Tandal of the vessel in question. As noticed earlier even the Insurance Co. does not dispute the fact that the engine shaft of the vessel had broken. The vessel had been towed by another vessel to reach Jamnagar and this fact was also not disputed by the Insurance Co.

(merely for commercial purpose) but are merely property dealers who buy and sell flats etc. In my opinion there could be no deficiency in service under the Consumer Protection Act in relation to such buyers of properties. It is not necessary for me to go into the question whether there could be a deficiency in service when there is a breach and rescission of a contract and the property is not delivered nor any service rendered? In short, whether non-performance of contract as such would constitute deficiency in service? It is established in this case that the Respondents-Complainants are only property dealers who only undertake buying and selling of properties but not enjoying them. In other words the Respondents-Complainants may be *de-jure* buyers and sellers of properties, but are *de-facto* property agents who act on behalf of the buyers and sellers and not true buyers themselves. In my opinion they are not consumers as defined under the Consumer Protection Act. The Appellant may be guilty of gross breach of contracts but for that he cannot be hauled up before Consumer Forums. The appeals, therefore, succeed and orders of the State Commission are set aside. There is no order as to costs.

Mr. Justice V. Balakrishna Eradi, President—The above order recorded by Shri Y. Krishan, Member, gives the relevant facts of the case. It is not, therefore, necessary to recite them again.

In our opinion there is no merit in any of the points urged on behalf of the Appellants. We are in full agreement with the reasoning and conclusions recorded by the State Commission. The appeals are accordingly dismissed. The Appellants shall pay to the Respondents Rs. 2,500/- by way of costs in each of the appeals.

Appeals allowed.