

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO.6588 OF 2023****VINIT BAHRI AND ANOTHER****.... APPELLANT(S)****VERSUS****M/S MGF DEVELOPERS LTD.
AND ANOTHER****.... RESPONDENT(S)****J U D G M E N T****PRASHANT KUMAR MISHRA, J.**

1) This Appeal assails the impugned judgment dated 11.05.2023 in Consumer Complaint No.74/2017, passed by the National Consumer Disputes Redressal Commission¹ at New Delhi whereby, the NCDRC dismissed the consumer complaint preferred by the appellants.

FACTUAL MATRIX

2) Shorn of unnecessary details, the facts stand thus: the appellants filed a complaint before the NCDRC for seeking a direction to the respondents to pay (i) Rs. 1,59,89,994/- being 18% interest; (ii) Rs.50,00,000/- as compensation for mental agony and harassment; (iii) Rs.15,00,000/- as compensation due to the change in location of Tower-C; (iv) Rs.35,61,494/- as excess amount realized towards fixtures and fitting; (v) Rs.2,50,000/- as the litigation costs; and (vi) any other relief which is deemed fit and proper.

¹ For short, 'the NCDRC'

3) The backdrop of the above complaint is that the respondents launched a group housing project in the name of 'The Villas' at Village Sahraul, Sector-25, Gurgaon, in the year 2005. The appellants in March 2005, deposited Rs.15,00,000/- as the booking amount, and, on 02.09.2005, they were allotted Unit No.VP-C/802 located on the ground floor of Tower-C with super built area of 3590 square feet.

4) Thereafter, on 12.06.2006, a Flat Buyer's Agreement was executed in favour of the appellants and Clause 9.1 of the Agreement stipulates that the possession of the flat shall be handed over within 36 months from the date of the Agreement, subject to a grace period of 90 days for obtaining the occupation certificate. It is the appellants' case that the due date of possession expired on 11.09.2009 and that the respondents have unilaterally changed the layout plan of Tower-C without informing the buyers. The respondents in their meeting held on 23.04.2009 have admitted the factum of change in the layout plan of Tower-C. The appellants also alleged that, on 06.09.2009, the respondents raised a demand for Rs.10,82,000/- and, subsequently, on multiple occasions, the respondents demanded for payments and the appellants have obliged to the same under protest and have taken possession of the flat on 08.01.2015. The respondents *vide* letter dated 02.01.2015, invited objections against the change of layout plan and the appellants filed their objections against the same. However, Director, Town and Country Planning, Haryana, issued occupation certificate on 14.08.2015.

5) On 10.01.2017, the appellants filed the subject complaint alleging deficiency in service and unfair trade practice. The appellants challenged the demand of Rs.30,81,894/- under various heads of EEDC, IDC, Service Tax, etc. and also Rs.4,80,000/- towards deficiency in providing promised fixtures in the flat.

6) Before the NCDRC, respondent No.1 filed a written reply wherein it was stated that the appellants have already been paid/adjusted a delay compensation of Rs.12,10,237/- as per clause 9.7 of the Agreement, and the same has been accepted unconditionally. It is also the case of respondent No.1 that the total area of the flat has been increased by 271.08 square feet, and the appellants were liable to pay for subject increase in the area. It is also stated that all the demands raised by the respondents were according to the Flat Buyer's Agreement. Significantly, it is alleged by respondent No.1 that the appellants have purchased the said flat for commercial purposes and after taking over the possession, the flat has been let out to one Shri Sunil Raman since March 2015. A lease deed to this effect has been executed on 03.03.2016. Ergo, it is the case of respondent No.1 that the appellants are not consumers and that the appellants' complaint should be dismissed. Respondent No.2 also filed a separate reply wherein it was stated that the said project 'The Villas' was handed over to respondent No.1 through settlement deed dated 19.12.2013 and that respondent No.2 is absolved of all liabilities as respondent No.1 took all the liabilities towards the project through indemnity deed dated 09.03.2016.

7) The NCDRC after considering the rival submissions, reached to a conclusion that the appellants do not fall under the definition of ‘consumer’ as they leased the said flat premises to Shri Sunil Raman and the said act is considered as commercial purpose.

SUBMISSIONS

8) Learned counsel for the appellants contended that the residential unit purchased by the appellants was purely purchased for personal usage and the NCDRC has committed an error in observing that the subject premises were purchased for commercial usage. The sole intent of the appellants behind purchasing the residential unit was to live closer to their parents. To buttress his submissions, the learned counsel for the appellants relied upon the decisions in ***IREO Private Ltd. vs. Alope Anand and Others***²; and ***Synco Textiles Pvt. Ltd. vs. Greaves Cotton and Company Ltd.***³.

9) Per contra, learned senior counsel for the respondents supported the impugned judgment and prayed for dismissal of this Appeal.

ANALYSIS

10) The pivotal question which falls for our considerations is whether the NCDRC was right in dismissing the complaint filed by the appellants on the premise that they do not fall under the definition of ‘consumer’ for leasing out the subject property for commercial purposes, falling within the exclusion clause of Section 2(1)(d) of the Consumer Protection Act, 1986⁴.

² (2022) 9 SCC 412

³ 1990 SCC OnLine NCDRC 3

⁴ For Short, ‘the 1986 Act’

11) Before adverting to the issue of whether the act of the appellants in leasing the subject flat falls under the exclusion clause of Section 2(1)(d) of the 1986 Act, it is necessary to outline the meaning and scope of the term ‘consumer’. The said term has been defined under Section 2(1)(d) of the 1986 Act and the same is reproduced below for ready reference:

“2. Definitions

(1) In this Act, unless the context otherwise requires,-

...

d) “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

(ii) 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 hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payments, when such services are availed of with the approval of the first mentioned person; **but does not include a person who avails of such services for any commercial purpose.**

Explanation.—For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;”

(Emphasis Supplied)

12) A bare perusal of the above provision reveals that the term ‘consumer’ encompasses any person who buys goods or avails services for

consideration, but excludes a person who obtains such goods for resale or for any commercial purpose. The Explanation to the said clause clarifies that ‘commercial purpose’ does not include use by a person of goods bought and used by him exclusively for the purposes of earning his livelihood by means of self-employment. While the 1986 Act does not exhaustively define ‘commercial purpose’, though the Explanation to Section 2(1)(d) carves out an exception for self-employment and earning livelihood, the dominant intention or dominant purpose of the transaction is determinative of whether the purchaser falls within the exclusion clause.

13) This Court in *Laxmi Engineering Works vs. P.S.G. Industrial Institute*⁵ observed that in absence of a statutory definition, the term ‘commercial’ denotes activities connected with or engaged in commerce, having profit as the main aim, whereas ‘commerce’ means financial transactions, especially buying and selling of merchandise on a large scale. This Court in *Laxmi Engineering Works* (supra) approved the view taken by the NCDRC in *Synco Textiles Pvt. Ltd.* (supra) wherein the NCDRC held that where a person purchases goods “with a view to using such goods for carrying on any activity on a large scale for the purpose of earning profit” he will not be a ‘consumer’, and that in order for the exclusion clause to apply, there must be a close nexus between the transaction of purchase of goods and the large scale activity carried on for earning profit. This Court in *Laxmi Engineering Works* (supra) further observed that the Explanation, being an exception to an exception, clarifies that purchase of goods for

⁵ (1995) 3 SCC 583

‘commercial purpose’ would not take the purchaser out of the definition of ‘consumer’ if the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment. The Explanation reduces the question of what constitutes ‘commercial purpose’ to a question of fact to be decided in the circumstances of each case, and it is not the value of the goods that matters but the purpose to which the goods bought are put to.

14) The interpretation of expression ‘commercial purpose’ was further expounded in *Lilavati Kirtilal Mehta Medical Trust vs. Unique Shanti Developers and Others*⁶ wherein it was observed thus :

“19. To summarise from the above discussion, though a strait jacket formula cannot be adopted in every case, the following broad principles can be culled out for determining whether an activity or transaction is “for a commercial purpose”:

19.1. The question of whether a transaction is for a commercial purpose would depend upon the facts and circumstances of each case. However, ordinarily, “commercial purpose” is understood to include manufacturing/industrial activity or business-to-business transactions between commercial entities.

19.2. The purchase of the good or service should have a close and direct nexus with a profit-generating activity.

19.3. The identity of the person making the purchase or the value of the transaction is not conclusive to the question of whether it is for a commercial purpose. It has to be seen whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser and/or their beneficiary.

⁶ (2020) 2 SCC 265

19.4. If it is found that the dominant purpose behind purchasing the good or service was for the personal use and consumption of the purchaser and/or their beneficiary, or is otherwise not linked to any commercial activity, the question of whether such a purchase was for the purpose of “generating livelihood by means of self-employment” need not be looked into.”

(Emphasis Supplied)

15) The principles laid down in *Lilavati Kirtilal Mehta Medical Trust* (supra) were reiterated in *Rohit Chaudhary and Another vs. Vipul Limited*⁷, wherein this Court observed as under:

“18. Thus, if the dominant purpose of purchasing the goods or services is for a profit motive and this fact is evident from the record, such purchaser would not fall within the four corners of the definition of “consumer”. On the other hand, if the answer is in the negative, namely, if such person purchases the goods or services is not for any commercial purpose and for one's own use, it cannot be gainsaid even in such circumstances the transaction would be for a commercial purpose attributing profit motive and thereby excluding such person from the definition of “consumer”.

(Emphasis Supplied)

16) While the aforesaid decisions elucidate the legal principles for determining what constitutes ‘commercial purpose’, the equally critical question as to who bears the burden of proving whether or not, the transaction falls within the exclusion clause of the term ‘consumer’ was addressed by this Court in *Shriram Chits (India) Private Limited Earlier Known as Shriram Chits (K) Pvt. Ltd vs. Raghachand Associates*⁸, in following words:

“19. As we have shown above, the definition of consumer has three parts. The significance of

⁷ (2024) 1 SCC 8

⁸ (2024) 9 SCC 509

deconstructing the definition into three parts was for the purpose of explaining on whom lies the onus to prove each of the different parts. There can hardly be any dispute that the onus of proving the first part i.e. that the person had bought goods/availed services for a consideration, rests on the complainant himself. The carve out clause, in the second part, is invoked by the service providers to exclude the complainants from availing benefits under the Act. **The onus of proving that the person falls within the carve out must necessarily rest on the service provider and not the complainant. This is in sync with the general principle embodied in Sections 101 and 102 of the Evidence Act, 1872 that “one who pleads must prove”.** Since it is always the service provider who pleads that the service was obtained for a commercial purpose, the onus of proving the same would have to be borne by it. Further, it cannot be forgotten that the Consumer Protection Act is a consumer-friendly and beneficial legislation intended to address grievances of consumers. [*National Insurance Co. Ltd. v. Harsolia Motors*, (2023) 8 SCC 362 : (2023) 4 SCC (Civ) 53] Moreover, a negative burden cannot be placed on the complainant to show that the service available was not for a commercial purpose.

20. Having held that the onus to prove that the service was obtained for a commercial purpose is on the service provider, we may clarify the standard of proof that has to be met in order to discharge the onus. **The standard of proof has to be measured against a “preponderance of probabilities”.** The test to determine whether service obtained qualified as a commercial purpose is no longer res integra in view of this Court's decision in *Lilavati Kirtilal Mehta case* [*Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers*, (2020) 2 SCC 265 : (2020) 1 SCC (Civ) 320] . Para 19 sets out the principles on which it must be determined whether the onus of proving “commercial purpose” has been properly discharged by the service provider.

21. If and only if, **the service provider discharges its onus of showing that the service was availed, in fact for a commercial purpose, does the onus shift back to the complainant to bring its case within the third part i.e. Explanation (a) to Section 2(7) — to show that the service was obtained exclusively for the purpose of earning its livelihood by means of self-employment.”**

(Emphasis Supplied)

17) In the light of the aforesaid adjudications and for the reasons discussed hereinbefore, we are of the considered view that the NCDRC has erred in dismissing the appellants' complaint. The onus of proving that the appellants fall within the exclusion clause of Section 2(1)(d) of the 1986 Act rests upon the respondents, and the respondents have failed to discharge this onus on a preponderance of probabilities. The determinative question is whether the dominant intention or dominant purpose behind purchasing the flat was to facilitate profit generation through commercial activity, and whether there exists a close and direct nexus between the purchase and such profit-generating activity. The respondents have not placed any cogent material on record to establish such nexus. The mere factum of leasing out the flat does not, by itself, demonstrate that the appellants purchased the property with the dominant purpose of engaging in commercial activity. The question of what constitutes 'commercial purpose' is a question of fact to be decided in the circumstances of each case based on the purpose to which the goods/properties were purchased. It must be emphasized that the mere act of purchasing immovable property, even multiple units, cannot *ipso facto* attract the exclusion clause of Section 2(1)(d) of the 1986 Act unless and until it is proved that the dominant purpose behind such purchase was commercial in nature. In absence of such proof, the appellants cannot be excluded from the definition of '*consumer*' under the 1986 Act.

18) In our view, the Complaint Case needs consideration on merits by the NCDRC. Accordingly, we set aside the impugned judgment dated 11.05.2023 passed by the NCDRC and restore Consumer Complaint

No.74/2017 to its original number to the file of the NCDRC. The NCDRC shall proceed to decide the Consumer Complaint on merits and in accordance with law.

19) The Appeal is allowed.

.....**J.**
(PRASHANT KUMAR MISHRA)

.....**J.**
(N.V. ANJARIA)

NEW DELHI;
FEBRUARY 04, 2026.