

HOUSING
AND
CONSUMER

RAVINDRA BANA

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HOUSING AND CONSUMER

The preamble of the Consumer Protection Act, 1986 (hereinafter referred to as the Act) reflects the legislative intention, namely, “to provide for the better protection of the interest of consumers”. The ordinary law of the land had provided the protection to the common man, but for various reasons, the said protection had become illusory. Various legislations and regulations providing for the said protection of the interests of the consumers had become insufficient as the enforcement machinery either did not move or it moved ineffectively and very slow. The importance of the Act lies in its promoting welfare of the society. It is a bold attempt to remove the helplessness of a consumer which he faces against powerful business, the might of Public Bodies which, as a matter of fact, proved to be a storehouse of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous considerations, leaving the common man helpless and shocked. The tragedy is that the melody is becoming so widespread and deep that the society instead of complaining and fighting for it, has started accepting it as a part of life. A bare perusal of the various terms in the definition clause, such as ‘Consumer’, ‘Service’, ‘Trader’, ‘Unfair Trade Practice’, demonstrate the legislative intent to widen the reach of the Act. The provisions of the Act thus have to be construed in favour of consumers to achieve the purpose of enactment, as it is a social, benefit oriented-legislation directed towards achieving public benefit.

The word “Consumer” is a comprehensive expression in the Act. Similarly, the definition of “Service” under section 2(1) (o) is very wide and clearly includes, inter alia, the “Housing Construction”, The Apex court while dealing with the issue of

housing in Lucknow Development Authority v M. K. Gupta ¹ has observed, inter alia, as under: -

“The entire purpose of widening the definition is to include in it not only day-to-day buying and selling activity undertaken by a common man, but even such activities which are otherwise not commercial in nature, yet they partake of a character in which some benefit is conferred on the consumer... Similarly, when a statutory authority develops land or allots a site or constructs a house for the benefit of a common man, it is as such, “service” as by a builder or contractor... When possession of the property is not delivered within stipulated period, the delay so caused is denial of “service”. Such disputes or claims are not in respect of the immovable property as argued, but “deficiency in rendering of service” of particular standard, quality or grade... Similarly, when a Statutory Authority undertakes to develop land and frame housing scheme, it while performing statutory duty, renders service to the society in general and individual in particular. A Development Authority while developing the land or framing a scheme for housing discharges statutory duty, the purpose and objective of which is service to the citizens. A person who applies for allotment of building site or for a flat constructed by the Development Authority or entered into an agreement with a builder or a contractor is a potential user and the nature of construction is covered in the expression “service” of any description.”

The Act requires provider of service to be more objective and care taking and it is still more in public service. When private undertakings are taken over by the government or corporations or are created to discharge what is otherwise State’s function and the objective of such social welfare is to provide better, efficient and cost effective services to the people. A Government

¹(1994)1 SCC243

or semi-government body or a local authority is as much amenable to the Act as any other private body rendering similar service.

The expression “Housing Construction’ in the definition of “service” inserted by Ordinance No. 14 of 1993 demonstrates the entire purpose of widening the definition, which are otherwise not commercial in nature, yet they partake of a character in which some benefit is conferred on the consumer. Construction of a house or a flat can be achieved by a person either by doing it himself or by hiring services of a builder or contractor, later being for consideration and is a service as defined in the Act. Similarly, when a statutory authority develops land or allots a site or constructs a house for the benefit of a common man, it is as much service as by a builder or a contractor. The one is contractual service and the other statutory service. Any defect in construction activity would be denial of comfort and service to a consumer under the Act.

INSTANCES OF DEFICIENCY IN SERVICE AT THE HANDS OF HOUSING BOARDS, STATE DEVELOPMENT AUTHORITIES AND BUILDERS ETC.

The consumers can approach the Redressal Forums for deficiency in service at various stages of housing such as Booking of plot; Deposit of price; Pricing; Refund of the amount deposited; Poor construction at the hands of the builders or the Development Housing Authorities; Delay in the delivery of possession of the flat or the plot; Development of the plots; Cancellation of the plot; Allotment of non-existent sites; Purchase through open auction of the flat or plot; Allotment of an alternative plot in lieu of the original allotment possession of which could not be given to the allottee for one reason or the other; Plots sold without approval of the layout plans; Houses under the Co-operative-Group Housing Societies; Compensation, etc.

BOOKING OF PLOTS

The applications are sought from public by the Development Authorities through an advertisement, which provides for application forms to be accompanied by application fees, followed by the draw of lots. The applicants are thousands in number and the application fee is returned to the unsuccessful applicants by the Authority and the delay in returning the application fees to the applicants was subject matter of litigations. The Apex Court in *HUDA v K.K. Goel*² held that a period of 9 months to a year is justifiable period to return the application fee without any interest, but if it can be demonstrated that the delay on the part of the Authorities in refunding the application fee was unreasonable, the courts have awarded interest notwithstanding that the brochure inviting the applications clearly provided that no interest would be paid by the Development Authorities.

Similarly, the name of the applicant not being considered at the time of the draw notwithstanding that the applicant had fulfilled all the requirements of the advertisement was held to be a "deficiency in service" as such, an applicant had a right for consideration of his application along with similarly situated persons and if at the appropriate time his name had been considered and allotted a plot, he would have been able to raise construction thereon with the resources at his disposal. It was held that by unduly and unlawfully denying him the opportunity of allotment, a reasonable and just compensation was required to be fixed and paid³.

DEPOSIT OF PRICE

Usually allotment is governed by the terms and conditions of allotment and providing for the consequences for the breach of such terms and conditions and the courts have held that the

² AIR 1996 SC 1981

³ *Estate officer Punjab Urban Planning and Development Authority v Dev Raj I* (1999) CPJ 426

forfeiture of the earnest money is the willful breach of the terms by the allottee, is justifiable.

PRICING

It is now well settled that the question of pricing of a plot is beyond the purview of the court. It has been held that it is the experts alone who can work out the mechanics of price determination and that the executive has a wide discretion and that the court should not normally interfere on the question of pricing and, if at all, it should be with the aid of the experts in the field. The National Commission in a recent judgment⁴ has gone into this issue in detail noticing all the judicial pronouncements. While noticing the broad principle laid down by judicial pronouncements the Hon'ble Court referred to the case of *DG v DDA*⁵ where the Supreme Court has held that the escalation of prices charged by the Development Authority would not amount to an unfair trade practice. The National Commission in this case has held that the Commission can look into the parameters of escalation, which are solely based on terms and conditions given in the brochure, in that such an exercise would not amount to interfering in the pricing per se⁶.

REFUND OF THE AMOUNT DEPOSITED

Normally the terms and conditions of the allotment govern the requests of the allottees for the refund of the amount, which could be for various reasons. One could be that the allottee does not want to go ahead paying the remaining installments, in which case some amount as postulated in the allotment letter is deducted and the balance is returned⁷. However, if the request for refund is made by the allottee on the ground that there has been

⁴ *EIL v G.D.A.I* (2000) CPJ 8

⁵ I(2000)CPJ 7

⁶ Some of the cases dealing with this issue are *Kanpur Development Authority v Smt. Sheela Devi* AIR 2004 SC 400; I(2001) CPJ 8; I(1996) CPJ 7; I(1991) CPJ 359; AIR 1980 SC 738;

⁷ AIR 1996 SC 1981

a considerably long delay in development or handing over of the possession of the plots, the National Commission in such cases has held that the allottee would be refunded the whole amount along with 18 per cent interest⁸.

POOR CONSTRUCTION AT THE HANDS OF THE BUILDERS OR THE DEVELOPMENT AUTHORITIES

The Hon'ble Commission has in several cases issued directions after arriving at a finding that the quality of construction of the flats was poor and that the Housing Board did not fulfil its promise held out in the brochure. The National Commission in addition to issuing directions for removal of defects in the construction has granted compensation as well.⁹

DELAY IN THE DELIVERY OF POSSESSION OF FLATS AND THE DELAY IN DEVELOPMENT OF THE PLOTS

The National Commission has vide its judgment dated 31st August, 2001 in the matter of HUDA v Darsh Kumar¹⁰ has dealt with this aspect in extenso and after examining the various judicial pronouncements has categorically held that when an allottee gives an application that he needs a plot of land to build a house for his residence, he is not guided by any commercial considerations. In most cases, his income would be stationary while inflation rises over the years. Further that there are stringent conditions while allotting a plot including requirement of filing affidavit that the allottee has no other residential plot or house in his/her name or in the name of his/her spouse and, thus the applicant is struck. He has no other place to go and has to wait for years for allotment of the plot so that he can build house for his residence, Psyche of an individual is always to move from rental accommodation to his own house. The Commission has observed

⁸ *Shashi Kiran Rattan v Swastic Construction I* (2004) CPJ 31 (NC); *H U D A v. Dev Dutt Gandhi* R.P. No. 1466/97 - decided by the National Commission on 15.2. 02.

⁹ I(1994)CPJ1097

¹⁰ I(2002)CPJ35

that the allottee is in Catch-22 situation, inasmuch as, he has deposited his savings to buy a plot and has legitimate expectations that a plot of land would be allotted to him within a reasonable period and he cannot go elsewhere since his money is blocked with the Authority. It would be too much to expect that an allottee would go in for another piece of land elsewhere since his money is blocked. Further by passage of time, prices have rocketed taking judicial notice of the escalation, not only in the cost of land, but also in the cost of construction, the National Commission concluded that in such circumstances, award of interest at the rate of 18 per cent per annum on the amount deposited by the allottee would be equitable as it will take into consideration the escalation of cost of construction as well. The Hon'ble Supreme Court of India in an appeal filed against the aforesaid judgment modified the order of the National Commission and held that the compensation cannot be at a rate uniform rate and if compensation has to be awarded for escalation in the cost of construction, it must be done under that head after taking into consideration the amount of delay. Such compensation can be fixed on the basis of indexes of the bodies like CPWD or PWD. Thus the Supreme Court has laid down the law in Ghaziabad Development Authority v Balbir Singh¹¹ that since what is being awarded is a re-expense for the loss or injury it, therefore, necessarily has to be based on the finding of loss or injury and has to co-relate with the amount of loss or injury and the award of compensation must be made under different, separate heads and must vary from case to case depending upon facts of each case and no hard and fast rule can, therefore, be laid down.

CANCELLATION OF PLOT

Cancellation of plots can be ordered for breach of terms of the allotment on the part of the allottee depending on the facts of each case, however, it has been now held that in case the

¹¹(2004) 5 SCC 65; see also *S.K. Jain v HUDA IV* (2003)CPI 96

plots are cancelled because of the cancellation of the scheme itself, in that case, the allottee would be entitled to interest on the amount deposited by the allottee at the time of refund of the said amount by the Development Authorities as decided by the National Commission in *Chandigarh Housing Board v Surinder Pal*¹².

ALLOTMENT OF NON-EXISTENT SITE

The allotment of a non-existent site has been held to be a “deficiency in service”, however, in such cases, the courts have issued directions that the complainants are entitled to an alternative site and for this negligence the allottee ought not to suffer and for the delay caused on re-allotment, the allottee is entitled to compensation in the form of award of interest on the amount deposited by the allottee¹³.

PURCHASE THROUGH OPEN AUCTION OF THE FLAT OR PLOT

In a case where the allotment of the plot has been made for the highest bidder in a public auction, the National Commission, following its decision in the earlier case *Nita Singla and ors V Dr. Kripal Singh*¹⁴ has held that a highest bidder in a public auction of a plot cannot be said to be a case of “hiring of services” in as much as, such a transaction has arisen out of auction sale which tantamount to outright sale of immovable property and there is no arrangement of hiring of service for consideration between the parties¹⁵.

¹² IV (2004) CPJ 47 (NC)

¹³ *Improvement Trust Ludhiana v Ram Prakash* IV (2003) CPJ 21

¹⁴ *Nita Singla & ors v Dr. Kripal Singh* III (1998) CPJ 33

¹⁵ *Ajit Singh Sodhi v UT Chandigarh* IV (2003) CPJ 362 also in *Shiela Construction Pvt. Ltd. V Nainital Lake Development Authority* III (1996) CPJ 11(NC); *Ashok Tayal & Anr. VDDA* II (1996) CPJ 3 (NC)

ALLOTMENT OF ALTERNATIVE PLOT IN LIEU OF ORIGINAL ALLOTMENT

The National Commission In its judgment dated 31-8-2001 in the matter of HUDA v R.P. Chawla has categorically held that the applicant / allottee cannot be burdened with any additional cost in addition to the original cost of the plot, inasmuch as, the alternative plot is being allotted in lieu of the original allotment and has necessarily to be on the same terms and conditions as the original allotment. The Hon'ble Commission has further awarded, interest at the rate of 18 per cent per annum for the delay in handing over possession of the alternative plot.¹⁶

PLOTS SOLD WITHOUT APPROVAL OF LAY OUT PLANS

Where the plot has been sold by the authorities without taking proper approval of the layout plans and as a result of which the possession could not be delivered to the allottees, the Commission has held such an act on the part of the Authority falling clearly in the category of “deficiency in service” on the part of the Authority. In another case, where subsequent to allotment of the plots, the Supreme Court had banned the construction activity in five km radius of Badkhal Lake and the complainant's plot fell within the said Supreme Court directions and as such, the Commission directed HUDA to refund the amount along with interest, holding that the complainants/ allottees were entitled to compensation.

HOUSING UNDER THE CO-OPERATIVE GROUP HOUSING SOCIETIES

The National Commission in a recent judgment has now held that the members of the Co-op. Societies fall within the definition of “consumer” for the purposes of the Consumer Act

¹⁶ See also *HUDA v Mrs. Poonam IV* (2003) CPJ 73; *GDA v K. K. Goswami IV* (2003) CPJ 33

and Section 93 of the Societies Act does not bar the jurisdiction of District Forum assuming jurisdiction in the matter¹⁷.

COMPENSATION

It is now accepted by the Hon'ble Supreme Court of India that the State is liable to compensate for loss or injury suffered by a citizen due to arbitrary actions of its employees. The law has always maintained that the public authorities that are entrusted with statutory function cannot act negligently. Under the Constitution of India, no functionary in exercise of statutory power can claim immunity except to the extent protected by the Statute itself and the public authorities acting in violation of constitutional or statutory provisions are accountable for their behaviour. The term 'compensation' is a very wide connotation and in legal sense it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult, or injury or loss. Under the Act, the Commissions have been vested with the jurisdiction to award value of the goods or services and compensation and it has to be construed widely, enabling Commissions to determine compensation for the loss or damage suffered by a consumer¹⁸.

The question as to whether an allottee of the land belonging to a Government Development Authority can avoid payment of price on the ground that the plot has not been developed by the Authority in accordance with the conditions of allotment, has been the subject matter of several judicial adjudications¹⁹. In one of the latest cases²⁰ the said question has been dealt in detail. The plot in question in the said case had been sold by open auction, which was further subject to the terms and

¹⁷ *Thirumurugam Co.-op Society v Lalitha M.* AIR 2004 SC 448; *Kalawati v United Vaish Co-op. Thrift and Credit Society I* (2002) CPJ 71 (NC);

¹⁸ *Lucknow Development Authority v M. K. Gupta* (1994) 1 SCC 243

¹⁹ *Shashi Kiran Rattan v Swastic Construction I* (2004)CPJ 31 (NC) wherein court withheld payment.

²⁰ *Haryana Builders Ltd. v HUDA & Ors.* AIR 2003 Pb. & Haryana 48

conditions embodied in the allotment letter, which had provided that after paying the 10% amount of the plot at the time of the bid and the 15% within one month of the acceptance of the bid, the remaining part could be paid in equal installments over a period of time. The allottee did not make the payment of the installments, which in turn resulted in the initiation of proceedings for resumption of the plot under the Act and the rules and the plot was actually resumed. The allottee challenged the resumption by way of filing a writ in the High Court contending, inter alia, that the Authority could not levy interest of any kind on the delayed payment because the development works had not been completed and further then the allottee was entitled not to make the payment or delay the payment of the installments on the ground of non-availability of amenities at the site as the development work was not complete.

The development authority on the other hand, controverting the allegation of the allottee, submitted that all the development works had been completed much before the offer of the possession and the allottee's plea of lack of development was an after thought because no such objection was raised at the time of taking possession and further that after having constructed the building without any hindrance or obstruction from any quarter, the allottee was estopped from raising the plea of lack of development and that in such circumstances, the resumption of the plot because of the allottee's persistent failure to pay the dues of the installments in accordance with the conditions of allotment was valid and justified. The Division Bench of the High Court following the judgments of the High Court and the Supreme Court, rejected the contention raised by the allottee and held that the allottee was not entitled to withhold the payment of the balance price of the plot on the pretext of non-development of the area or lack of amenities. The same view is held by Hon'ble Supreme Court in *Prashant Kumar v GDA*.²¹

²¹ (2000) 4 SCC 120

The National Commission in the case of Delhi Development Authority v Smt. Renu Gupta²² has held that where an allottee has paid the whole price of the shop to the Development Authority but the shop is not equipped with electricity and water in such a situation DDA cannot be permitted to take a plea that providing of electricity and water was the responsibility of Delhi Vidyut Board and Municipal Corporation of Delhi respectively and as such, DDA was held to be guilty of deficiency in providing service to the allottee. The National Commission while rejecting the contention of DDA as commented on the helplessness of a citizen who is to suffer even when whole of the price of the premises has been paid and that in the facts of this case, a citizen was harassed too much at the hands of the agencies and relying on the judgment of the Supreme Court in the case of Lucknow Development Authority v M.K. Gupta commented on the conduct of such authority and directed the DDA to immediately provide the services.

The National Commission in the case of Ghaziabad Development Authority v Gurudutt Pandey²³ has decided the issue as to whether a consumer dispute could be raised in respect of deficiency in service on part of Development Authority even after taking possession of the flat. The main contention of the Development Authority before the National Commission was that after having taken possession of flat, the complaint under Consumer Protection Act could not have been filed, as at that time it could not be said that there was any consumer dispute existing between the complainant and the GDA. Rejecting the said contention, the National Commission has held that it is only when possession is taken and a consumer starts moving, then he would know the deficiencies, particularly those which are latent in the construction of the house and it is a dangerous proposition to content that right of consumer gets wiped out on his taking possession of the house.

²² Revision Petition No.694/03 decided on 10/4/03

²³ Revision Petition No.152/2000 decided on 21/8/2000

The National Commission has held that in a case where the builder has completed only 65 per cent of the complex as promised to the applicants, the builder is liable to refund the entire money with interest to the applicants as it squarely falls in the category of 'deficiency in service'.²⁴

In *GDA v Vinod Kumar Sharma*,²⁵ the National Commission has held that if the possession is not delivered because of an order staying the handing over of possession passed by a competent court, in such a case, the applicant will not be entitled to any interest on the amount deposited by him, in as much as, the stay order passed by the competent Court had restrained the builder and as such, he could not be held responsible for the delay for the period during which the said stay order passed by the court was in operation.

It will not be out of place to mention here that an ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities or even big builders. If public functionary is found to have acted oppressively or maliciously, which results in harassment and agony, then such an exercise of power is in fact the abuse of such a power and no law provides protection against it. He who is responsible for it, must suffer and in many cases, therefore, the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally, but it definitely helps in curing social evil and it may result in improving the work culture and change in the outlook. In certain cases, merely awarding the interest on the amount deposited by the applicants with a view to compensate such applicants in respect of the escalation of the cost of construction, may not really remove the grievance of the applicant, in as much as, the escalation costs have rocketed in the recent years. The applicant is entitled to demonstrate before the Commission by referring to the guidelines provided under

²⁴ *Sankatrai v Falcon Developers I* (2003) CPJ

²⁵ II (2002) CPJ 19

various building bylaws. In one of the cases²⁶ the Hon'ble National Commission had gone into the various issues by the applicant and had awarded the compensation under the various heads, like mental agony and torture due to mismanagement of HUDA and compensation awarded towards the rent paid by the allottee during the period for which he was denied the possession of his flat or plot and in addition, the Commission gave a direction that compensation for escalation in the cost of construction from 1982 to 1994 would be paid in accordance with the construction done under 'Unified Building Bye-laws, National Capital Territory of Delhi'. This was an attempt on the part of the National Commission to arrive at a figure of compensation to really redress the grievances of the allottee monetarily. The appeal against that order taken up to the Hon'ble Supreme Court has also been dismissed against the Authority by the Hon'ble Supreme Court²⁷.

The Supreme Court in a recent judgment in Ghaziabad Development Authority v Balbir Singh²⁸ has dealt with this question in detail and has held that compensation cannot be uniform and has to be taken on the facts of each case. Dealing with the case of delay in handing over possession of the plots/houses to the consumers, the Supreme Court observed that in cases where possession is being directed to be delivered the compensation for harassment will necessarily have to be less because the party is being compensated by increase in the value of the property he is getting as compared to the cases where only money is directed to be returned. But in cases where money is being simply returned, then the party is suffering a greater loss, inasmuch as, he had deposited the money in the hope of getting a flat or plot and he is being deprived of that flat or plot as well as the benefit of escalation of price of that flat or plot and, therefore, the compensation in such cases would necessarily have to be

²⁶ *Rajnish Chander Sharda v, HUDA*, II (1995)CPJ 70

²⁷ On 12-1-2000 In the judgment in *HUDA v, Rajnish Chander Sharda* C.A. No. 5970 of 1995

²⁸ (2004)5SCC 65

higher. Further, if the construction is not of good quality or not complete, the compensation would be the cost of putting it in good shape or completing it along with some compensation for harassment. Similarly, if at the time of giving possession, a higher price or other amounts are collected unjustifiably, the direction would be to refund it with reasonable rate of interest. If possession is refused or not given because the consumer has refused to pay the amount, then on the finding that the demand was unjustified, the consumer can be compensated for harassment. If a party who has paid the amount is told by the Authority that they are not in a position to ascertain whether he has paid the amount and that party is made to run from pillar to post in order to show that he has paid the amount, there would be 'deficiency of service' for which compensation for harassment must be awarded depending on the extent of harassment. Similarly, if after delivery of possession, the sale deeds or title deeds are not executed without any justifiable reason, the compensation would depend on the amount of harassment suffered. The court observed that these are some of the mere examples and the list is not exhaustive and that this clearly shows that compensation cannot be the same in all cases irrespective of the type of loss or injury suffered by the consumer and has to be worked out after looking into the facts of each case and after determining what the amount of harassment/ loss which has been caused to the consumer.

In this context, the Hon'ble Court further approved of the judgment in the case of Lucknow Development Authority v M. K. Gupta²⁹, where this Court has held that the public authorities become liable to compensate for misfeasance in public office, i.e., an Act which is oppressive or capricious or arbitrary or negligent, provided loss or injury is suffered by a citizen. The Hon'ble Supreme Court has held that the Commission/Forum under the Act must determine that such sufferance is due to malafide or capricious or arbitrary act and thereafter it can determine the amount for

²⁹(1994) 1 SCC 243

which the authority is liable to compensate the consumer for his sufferance due to misfeasance in public office by the officer. Such compensation is for vindicating the strength of law and such orders act as a check on arbitrary and capricious exercise of power and will help in social evil. The Hon'ble Court observed that no authority abrogate to it self the power to act in a manner which is arbitrary. Matters, which require immediate attention, should not be allowed to linger on. The consumer must not be made to run from pillar to post and that if the Commission is satisfied that the complainant is entitled to compensation, then after recording a finding it must direct the authority to pay compensation and also direct recovery from those found responsible for such unpardonable behaviour.

CONCLUSION

In the view of the above discussion, it may be said that the Act is clearly a social welfare legislation to help a consumer. The strict legal technicalities are not required to be followed and to that extent, the Commission / Forum under the Act, act differently. It has been experienced that in a large number of cases the dispute invariably is between a common man and the mighty builders or other service providers including the Public Bodies. The Hon'ble Supreme Court of India in a case involving the matter of Secretary, Thiru Murugan Co-operative Agricultural Credit Society v M. Lalitha³⁰, has held that having regard to the scheme of the Act and the purpose sought to be achieved, namely, to protect the interest of the consumer better, the provisions are to be interpreted broadly, positively and purposefully. The court observed that under the Consumer Protection Act, 1986 the court has to consider as regards the additional jurisdiction conferred on the Consumer Forums and not their exclusion. The remedies that are available to the aggrieved party under the Act, are wider, inasmuch as, in addition to granting a specific relief, the Forums

³⁰(2004) 1 SCC 305

under the Act have jurisdiction to award compensation for the mental agony, suffering etc. the Supreme Court has held that the Commissions / Forums under the Act have to keep in mind that the Act is one of the benevolent piece of legislation to protect a large body of consumers from exploitation and the provisions ought to be interpreted in a rational manner for achieving the objective set forth in the Act and the approach of the Forums has to be rational rather than technical. The court has further held that the main objective of the Act is to provide for better protection of the interest of the consumer and for that purpose to provide for better redressal mechanism through which cheaper, easier, expeditious and effective redressal is made available to the consumers. It may finally be said that the satisfaction of the consumer is in away direct reflection on the quality of service provided.

Annexure

MODEL FORM OF NOTICE, COMPLAINT, AFFIDAVIT AND REPLY
MODEL FORM-1 NOTICE BEFORE FILING THE COMPLAINT

Name and address

.....
(of the trader, dealer, firm, company, etc.)

.....
(Complete address)

IN RE: (Mention the goods/services complained of giving details)

.....
Dear Sir,

This is to bring to your kind notice that I had purchased.....from your for a consideration of Rs..... paid in cash vide your cash memo/ Receipt/Invoice No..... (or through cheque No dated..... drawn on bank for a sum of Rs

The said goods are suffering from the following defects:

- (i)
- (ii)etc

I have reported the above matter to you several times (give reference of earlier letters, if any) but despite all my pleadings you have not made good the defect in the goods (or deficiency in services) which is indeed regrettable and highly unbusiness like. On account of your aforesaid dereliction of duty and failure and neglect to rectify the same I have suffered losses/incurred expenses

.....
.....
.....
.....

(give details)

which you are liable to compensate to me.

You are hereby finally called upon to

(i) remove the said defects in the goods
and/or

(ii) replace the goods with new goods
and/or

(iii) return the price/ charges paid

(iv) pay compensation for financial loss/injury/interest
suffered due to your negligence
(give details)

in the sum of Rs with interest @ %
per annum within days of the receipt of this
notice failing which I shall be constrained to initiate against
you for redressal of my aforesaid grievances and recovery of
the aforesaid amount such proceedings, both civil and
criminal as are warranted by law, besides filing a complaint
under the statutory provisions of The Consumer Protection
Act, 1986 exclusively at your own risk, cost, responsibility
and consequences which please note.

Place.....

Dated.....

Sd/-

.....

Model Form –2 -The complaint

BEFORE THE HON'BLE DISTRICT CONSUMER DISPUTES
 REDRESSAL FORUM AT

OR

BEFORE THE HON'BLE STATE CONSUMER DISPUTES
 REDRESSAL COMMISSION AT

OR

BEFORE THE HON'BLE NATIONAL CONSUMER DISPUTES REDRESSAL
 COMMISSION AT NEW DELHI

IN RE: COMPLAINT NO OF 20 IN THE MATTER OF:
 (FULL NAME)(DESCRIPTION)(COMPLETE ADDRESS)

..... Complainant

VERSUS

(FULL NAME)(DESCRIPTION)(COMPLETE ADDRESS)

..... Opposite Party/ Parties

**COMPLAINT UNDER SECTION 12/SECTION 17/
 SECTION 21 OF THE CONSUMER PROTECTION ACT, 1986.**

RESPECTFULLY SHOWETH

INTRODUCTION

(In this opening paragraph the complainant should give his introduction as well as that of the opposite party/parties.

TRANSACTION

(In this paragraph complainant should describe the transaction complained of, *i.e.*, particulars and details of goods/ services availed; items of goods/kind and nature of service; date of purchase of goods/availing of service; amount paid as price/ consideration, full or in part towards the goods/service; Photocopies of the bill/cash memo/voucher or receipt should be attached and properly marked as Annexure – A,B,C and so forth

or 1,2,3 and so forth.)

DEFECT/DEFICIENCY

(In this paragraph complainant should explain the grievance, *i.e.*, whether the loss or damage has been caused by some unfair trade practice or restrictive trade practice adopted by any trader or there is some defect in the goods or there has been deficiency in service or the trader has charged excessive price for the goods. One should elucidate the nature of unfair trade practice adopted by the trader, *i.e.*, relating to the quality of goods/services; sponsorship; warranty or guarantee for such period promised. The nature and extent of defects in goods should be explained and so should the deficiency in service. In case of excessive price one should specify the details of actual price fixed by or under any law for the time being in force or as set out on goods and their packing vis-a-vis the price charged by the trader. Complaint can also be filed against offer for sale of goods hazardous to life and safety when used. You should narrate your grievance and rest assured it is being read /heard by compassionate and pragmatic judges. Photocopies of relevant documents must be attached.)

RECTIFICATION

(In this paragraph complainant should highlight what attempts were made by him to set things right, *i.e.*, personal visits or negotiations; communication in writing if any; whether any legal notice was got served and / or whether he has approached any other agency for redressal like, Civil or Criminal Court of competent jurisdiction; the stage of its proceedings, its outcome, if any, alongwith copies (certified preferably) of such proceedings. The nature of response got from the trader when irregularities were brought to his notice, should also be disclosed here).

OTHER PROVISIONS

(In this paragraph reference may be made to any other law or rules or regulations of particular procedure which is applicable to the case and/or which has been violated by the trader and consumer's rights under the same. There are incidental statutory obligations, which traders must fulfil and in case of their failure to do so the case in *prima facie* made out and Forum would take cognizance).

EVIDENCE

(In this paragraph complainant should give details of documents and/or witnesses he will rely upon to substantiate his case. The documents attached as Annexures as stated above may be incorporated in a proper list and a list of witnesses (if any) may be filed similarly). The annexures should be attested as "True Copy".

JURISDICTION

(In this paragraph complainant should liquidate the claim in the complaint, *i.e.*, upto 20 lakh; 20 lakh to one crore; or above and set out the pecuniary jurisdiction of the Forum/ State Commission/National Commission, as the case may be. The territorial Jurisdiction should be highlighted to obviate any formal objection).

LIMITATION

That the present complaint is being filed within the period prescribed under section 24A of the Act.

RELIEF CLAIMED

(In this paragraph complainant should describe the nature of relief he wants to claim. *i.e.*, for removal of defects in goods or deficiency in service; replacement with new goods; return of the price or charges, etc., paid and/or compensation on account of financial loss or injury or detriment to his interest occasioned by negligence of the opposite party and elucidate how you have calculated the amount

of compensation claimed).

PRAYERCLAUSE

It is, therefore, most respectfully prayed that this Hon'ble Forum/ Commission may kindly be pleased to (Details of reliefs which complainant wants the Court to grant)

Place:.....

Dated:.....

Complainant Through.....
(Advocate or Consumer Association,
etc.)

Verification.

I, the complainant above named, do hereby solemnly verify that the contents of my above complaint are true and correct to my knowledge, no part of it is false and nothing material has been concealed therein. Verified this day of 20 at Complainant.

Note: Although it is not compulsory, complainant may file an affidavit in support of the complaint which adds to the truth and veracity of allegations and gives credibility to the cause. It need not be on a Stamp paper but one should get it attested from an Oath Commissioner appointed by a High Court. The format is just as simple.

Model Form -3- Affidavit in support of the complaint

BEFORE THE HON'BLE IN RE: COMPLAINT NO. OF
20..... IN THE MATTER OF:

.....
..... Complainant

.....

..... Opposite party

AFFIDAVIT

Affidavit of

Shri..... S/o. Shri.....
aged..... years, resident of
.....

- (1) That I am complainant in the above case, thoroughly conversant with the facts and circumstances of the present case and am competent to swear this affidavit.
- (2) That the facts contained in my accompanying complaint, the contents of which have not been repeated herein for the sake of brevity may be read as an integral part of this affidavit and are true and correct to my knowledge.

Deponent

Verification:

I, the above named deponent do hereby solemnly verify that the contents of my above affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed therein.
Verified this..... day of..... 20.....
at.....

Deponent

Model Form –4- Reply by the trader to the complaint

BEFORE THE HON'BLE.....THE CONSUMER
DISPUTES REDRESSAL FORUM/COMMISSION AT.....

IN RE: COMPLAINT NO.....OF 20.....

IN THE MATTER OF:

.....Complainant

VERSUS

.....Opposite Party

DATE OF HEARING.....

**WRITTEN STATEMENT ON BEHALF OF RESPONDENTS
TO THE COMPLAINT OF THE COMPLAINANT**

RESPECTFULLY SHOWETH:

Preliminary Objections

- 1 That the present complaint is wholly misconceived, groundless and unsustainable in law and is liable to be dismissed as such. The transaction question was without any consideration and free of charge.
- 2 That this Hon'ble Forum/ Commission has no jurisdiction to entertain and adjudicate upon the dispute involved in the complaint in as much as it is not a consumer dispute and does not fall within the ambit of the provisions of the Consumer Protection Act, 1986, hereinafter called the said Act and is exclusively triable by a Civil Court and as such the complaint is liable to be dismissed summarily on this score alone.
- 3 That the dispute raised by the complainant in the present complaint is manifestly outside the purview of the said Act and in any event, the Act is in addition to and not in derogation of the provisions of the..... Act. The proceedings initiated by the complainant under the Act are honest, null and void and without jurisdiction.
- 4 That the definitions of 'Complainant', 'Complaint' 'Consumer Dispute' and 'Service', as defined in Section 2(1) of the said Act do not cover the claims arising under the present dispute and that from the aforesaid definitions, the complainant is not 'consumer' and the controversy involved in the complaint is not a 'consumer dispute'.
- 5 That the present complaint is baseless and flagrant abuse of process of law to harass and blackmail the answering respondent.
- 6 That the complainant has no *locus standi* to initiate the present proceedings.
- 7 That the complaint is bad for non-joinder of necessary and proper party and is liable to be dismissed on this score alone.
8. That the complainant has already filed a Civil Suit for in a

court of competent jurisdiction which is pending disposal in the Court of and the present complaint has become infructuous.

- 9. That the present complaint is hopelessly barred by limitation.
- 10. That this Hon'ble Forum/Commission has no territorial or pecuniary jurisdiction in as much as the amount involved in the subject-matter exceeds/is less than the limit prescribed by Section 11(1) Section 17(1)(a)(i)/Section 21(a)(i) of the Act.
- 11. That the present complaint is frivolous and vexatious and liable to be dismissed under Section 26 of the Act.
- 12. That the present complaint has not been verified in accordance with law.

On Merits:

In these paragraphs respondent must reply each and every allegation made and contention raised by the complainant, factual and legal as well. In case one has already made good the defect or deficiency, elucidate steps taken. One may have, *inter alia*, following goods defences as well.

- 1. That the transaction entered between the parties to the above dispute is a commercial one and the complainant cannot claim any relief from this authority in as much as
(give details)
- 2. That the complainant had purchased the goods as a seller/retailer/distributor, etc., for consideration of resale and as such is barred from moving this Hon'ble Forum/Commission for the alleged defect/deficiency etc. in as much as
(give details)
- 3. That the complainant has already availed the warranty period during which the answering respondent has repaired/replaced the goods in question. The complainant is thus legally stopped from enforcing this complaint or to take benefit of his own wrong.
- 4. That the present complaint is an exaggeration beyond proportion despite the fact that the complainant is himself responsible for delay and laches in as much as he has on several

occasions changed his option for class of goods/type of allotment scheme of flats/model of vehicle, etc
(give details)

- 5 That the answering respondent is well within his rights to charge extra price for the subject-matter of the above dispute in as much as time was not the essence of delivery thereof. The complainant is liable to pay the increased price w.e.f on account of escalation due to excise duty/budgetary provisions etc. in as much as.....(give details)
- 6 That the complainant has accepted the goods and/or service towards repair/replacement etc. without protest and the present complaint is merely an after thought.
- 7 That without prejudice the answering respondent as a gesture of goodwill is prepared to
(give details of rectification, if any, which can be done in case of minor or tolerable problems to avoid harassment to consumer and litigation problems)

The allegations of defect/default/negligence and/or deficiency in service are wholly misconceived, groundless, false, untenable in law besides being extraneous and irrelevant having regard to the facts and circumstances of the matter under reference.
Prayer clause with all the submissions made therein is absolutely wrong and is emphatically denied. Complainant is not entitled to any relief whatsoever and is not entitled Model Form costs.

Sd/-
(Opposite Party)

Place:
Dated:

through
(Advocate)

Verification

I, the above named respondent do hereby verify that the

contents of paras to of the written statement on merits are true and correct to my knowledge. While paras to of preliminary objections and to of reply on merits are true to my information, belief and legal advice received by me and believed to be true while the last para is prayer to this Hon'ble Court. Verified at this day of 20.....

Sd/-

(Opposite party)