

CASE DETAILS

ROHIT CHAUDHARY & ANR.

v.

M/S VIPUL LTD.

(Civil Appeal No. 5858 of 2015)

SEPTEMBER 06, 2023

[S. RAVINDRA BHAT AND ARAVIND KUMAR, JJ.]

HEADNOTES

Issue for consideration: The interpretation of the word and expression “Commercial Purpose” defined u/s. 2(1)(d) of the Consumer Protection Act, 1986.

Consumer Protection Act, 1986 – ‘Commercial purpose’ – Not defined in the Act – The Explanation (added by Consumer Protection (Amendment) Act 50 of 1993):

Held: The expression ‘commercial purpose’ has not been defined under the Act – In the absence thereof one have to go by its ordinary meaning – ‘Commercial’ denotes “pertaining to commerce”; it means ‘connected’ with or engaged in commerce; mercantile; “having profit as the main aim”; relate to or is connected with trade and traffic or commerce in general, is occupied with business and commerce – The Explanation (added by Consumer Protection (Amendment) Act 50 of 1993 (replacing Ordinance of 24 of 1993 w.e.f. 18.06.1993) excludes certain purposes from the purview of the expression ‘commercial purpose’ – The Explanation clarifies that even purchases in certain situations for ‘commercial purposes’ would not take within its sweep the purchaser out of the definition of expression ‘consumer’ – In other words, if the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment, such purchaser of goods would continue to be a ‘consumer’. [Para 12]

Consumer Protection Act, 1986 – “Commercial purpose” – To ascertain purchase for “commercial purpose” or not – Assertion made in the complaint important – Evidence tendered had to be evaluated – No straight jacket formula can be adopted:

Held: If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment, such purchaser of goods would continue to be a ‘consumer’ – When there is an assertion in the complaint filed before the Consumer Court or Commission that such goods are purchased for earning livelihood, such complaint cannot be nipped at the bud and dismissed – Evidence tendered by parties will have to be evaluated on the basis of pleadings and thereafter conclusion be arrived at – There cannot be any defined formula with mathematical precision to examine the claims for non-suiting the complainant on account of such complaint not falling within the definition of the expression ‘consumer’ as defined u/s. 2(1)(d). [Para 12]

Consumer Protection Act, 1986 – “Consumer” – Exclusion of persons buying goods either for resale or for use in large scale profit making activity from the definition of consumer – Intention of Parliament:

Held: The Parliament has excluded from the scope of ‘Consumer’ for igniting proceedings under the Act, a person who obtains goods or services for re-sale or for any commercial purpose – Going by the plain dictionary meaning of the words used in the definition section the intention of Parliament must be understood to be to exclude from the scope of the expression “consumer” any person who buys goods for the purpose of their being used in any activity engaged on a large scale for the purpose of making profit – The words ‘for any commercial purpose’ must be understood as covering the cases other than those of resale of the goods – Thus, it is obvious, that Parliament intended to exclude from the scope of definition not merely persons who obtain goods for resale but also those who purchase goods with a view to using such goods for carrying on any activity on a large scale for the purpose of earning profit – Thus, persons buying goods either for resale or for use in large scale profit making activity will not be a consumer entitled to protection under the Act, which would be a plain interpretation of this definition clause. [Para 11]

Consumer Protection Act, 1986 – The NCDRC held that commercial space booked by the complainants cannot be said to be for the purposes of earning livelihood by self-employment or in other

words the appellants are not consumers as defined u/s. 2(1)(d) of the Act – Propriety:

Held: A perusal of the complaint filed before the Commission would indicate that appellants have specifically pleaded that they were in search of office space “for their self-employment and to run their business and earn their livelihood” – In the statement recorded on oath by the Commission, while hearing the maintainability of the complaint, the first appellant has stated that he was earlier engaged in the business of caustic soda as a dealer of M/s. ‘R’ Industries and presently engaged in the business of investment/dealing in property – He has nowhere stated that he had proposed to purchase the office space from the respondent for the purpose of either selling the same for higher price or the said property was being purchased as an investment for being sold in future – The statement of the appellant was that he engaged in the business of investment/dealing in property would not ipso facto suggest or indicate the property proposed to be purchased from the respondent was for commercial purpose – It is not in dispute that in all the respondent has received a sum of Rs.51,10,117/- from appellants – To balance the equities, respondent directed to refund the amount it has received from appellants with interest calculated @ 12% per annum – Therefore, the order dated 11.05.2015 passed by the NCDRC in consumer complaint set aside. [Paras 13, 16 and 17]

LIST OF CITATIONS AND OTHER REFERENCES

Synco Textiles Pvt. Ltd. vs. Greaves Cotton and Company Ltd., 1990 SCC Online NCDRC 3 : (1991) 1 CPJ 499; *Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers and others*, (2020) 2 SCC 265 : [2019] 14 SCR 563; *Laxmi Engineering Works v. P.S.G. Industrial Institute*, (1995) 3 SCC 583 : [1995] 3 SCR 174 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal No.5858 of 2015.

From the Judgment and Order dated 11.05.2015 of the National Consumer Redressal Commission at New Delhi in Consumer Complaint No.276 of 2015.

Appearances:

Digendra Sharma, Ajay Kumar Singh, Anubhav Bhandari, Niharika Dubey, Advs. for the Appellant.

M. R. Shamshad, Atul Sharma, Ankur Sharma, Alok Tripathi, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT**JUDGMENT****ARAVIND KUMAR, J.**

1 The interpretation of the word and expression “Commercial Purpose” defined under Section 2(1)(d) of the Consumer Protection Act, 1986 (hereinafter referred to as the ‘*Act*’ for the sake of brevity) is the pivotal issue in this appeal.

FACTUAL MATRIX

2 The appellants intended to purchase a commercial space in the project called ‘Vipul World Commercial’ situated at Gurugram, Haryana, promoted by the respondent. After having come to know that Mrs. Bindu Rawlley and Mr. Talwinder Singh intended to sell their shares in office unit No.306 on the third floor in the aforesaid commercial complex allotted to them by the respondent, appellants agreed to purchase the same and accordingly made payment of entire agreed amount to their vendors. Recognizing the said transfer, the names of the appellants came to be recorded by the respondent in substitution to the names of the vendors of appellants. The customer code allotted to the original allottees was continued in the name of the appellants. It was agreed between the appellants and their vendors that appellants would pay a sum of Rs. 18,07,100 to the original allottees and the balance amount of Rs.34,27,050 to the respondent as and when demanded by the respondent. In furtherance of the same and on payment to the original allottees, the fact of such sale of shares was intimated to the respondent.

3 Subsequent to the aforesaid circumstance, respondent raised a demand on the appellants and accordingly the amount was paid which was outstanding as on the date of demand. The respondent issued the receipt and also allotment letter allotting commercial space in “Vipul Business

Park" – 105 and thereafter re-allotted unit No.814 on 8th Floor for a sale consideration of Rs.51,51,415. This unilateral change was objected to by the appellants and in response to the same, the respondent threatened to forfeit the amount paid till date and also to cancel the allotment of the office space.

4 Respondent forwarded a buyer's agreement to the appellant and called upon them to return the same after signing and same was duly complied under the circumstances that prevailed. The respondent had agreed to deliver possession of the premises to the appellants within 24 months from the date of execution of such agreement and for reasons unknown, the same was not delivered. In the interregnum, appellants continued to pay instalments as and when demands were raised by the respondent (same has been denied by respondent). As per the statement of account issued by the respondent to the appellants, they have acknowledged total receipt of Rs. 50,28,122/- and payment of Rs.81,995/- made towards service tax was not reflected in the statement of accounts. As per the payment schedule forwarded by the respondent to the appellants, a sum of Rs.2,47,148/- was due and payable to the respondent by the appellants within 30 days from the date of possession notice, which was not issued.

5 On account of non-intimation about delivery of possession of the office space unit allotted to the appellants and the inaction of the respondent in not delivering possession of the office space allotted, the appellants approached the National Consumer Redressal Commission at New Delhi by filing a complaint, which was preceded by issuance of a legal notice whereunder the appellants demanded refund of Rs.51,10,117/- and interest @ of 18% P.A. amounting to Rs.42,52,143/- after terminating the buyer's agreement dated 27.11.2009. A further sum of Rs.50 lakhs was also claimed towards mental agony. The Commission by impugned order dated 11.05.2015, dismissed the complaint in limine on the ground of maintainability holding that appellants are not '**consumers**' as defined under Section 2(1)(d) of the Act as appellants were already carrying on business for the purposes of their livelihood and therefore, it cannot be said that the property which was the subject matter of the complaint before the Commission was being purchased by them exclusively for the purposes of earning livelihood by way of self-employment. The Commission also opined that Commercial space booked by the appellants was for earning profit and

not for the purpose of earning livelihood by way of self-employment by relying upon the statement of first appellant recorded by the Commission. Hence the appeal.

6 We have heard the arguments of Shri Digendra Sharma, Mr. Ajay Kumar Singh, Mr. Anubhav Bhandari and Mr. Niharika Dubey, learned counsel appearing for the appellants and Mr. M.R. Shamshad, Mr. Atul Sharma, Mr. Ankur Sharma and Mr. Alok Tripathi, learned counsel appearing for the respondent.

7 It is the contention of the learned counsel appearing for the appellants that the Commission had erred in not appreciating the fact of appellants having booked the commercial space only for the purpose of earning livelihood by way of self-employment and not for the purposes of reselling or making profit due to escalation of price as pleaded in the complaint; in the statement that came to be recorded by the Commission, nowhere it has been stated by the appellants that commercial space booked by them was for the purpose of making profit and mere running of a dealership business of Reliance Industries and engaging themselves in business of investment in property, *per se* would not indicate or suggest that appellants intended to sell the same; the appellants though had approached the respondent for delivery of possession of the commercial space allotted to them, till date it was not delivered and silence on the part of the respondent had caused mental agony, frustration and depression to the appellants; the unilateral change of the office unit from Third floor to Eighth floor without consent of the appellants and forwarding a unilateral agreement and forcing the appellants to sign the same, by receiving all payments would tantamount to deceptive practice and falls within the meaning of ‘unfair trade practice’ as defined under the Consumer Protection Act; inordinate delay on the part of the respondent in completing the project and handing over possession of the office space allotted to the appellants has resulted in appellants undergoing serious mental agony and as such they should be compensated as prayed for in the complaint.

8 Rebutting the said contentions, learned counsel appearing for the respondent Mr. M.R. Shamshad, Mr. Atul Sharma, Mr. Ankur Sharma and Mr. Alok Tripathi, has supported the impugned order and has contended that appellants would not fall within the four corners of the definition of

‘*consumer*’ as defined under Section 2(1)(d) of the Act and the statement of the appellant No.1 recorded on oath by the commission while hearing the maintainability of the complaint, clearly shows that first appellant was earlier engaged in the business of caustic soda as a dealer of M/S Reliance Industries and presently engaged in the business of investments/dealing in property, and this would indicate that appellants were already engaged in the business and therefore, the property in question could not be said to be bought exclusively by the appellants for the purpose of earning their livelihood by self-employment and as such, the order of dismissal would not call for interference. He would elaborate his submissions by contending that appellants are already engaged in the business and the Act would exclude those persons who avail services for commercial purposes and the office space was not purchased by the appellants exclusively for the purpose of earning livelihood; the complaint does not disclose any cause of action and it also ought to have been dismissed for suppression of fact namely the appellants having defaulted in the payments. Accordingly, he has sought for dismissal of the appeal.

DISCUSSION AND OUR FINDINGS:

9 The National Commission at the outset considered the question as to whether the appellants are “*Consumer*” and answered in the negative. It has been held that appellants would not be entitled to seek redressal of their grievance under the provisions of the Act. On the basis of the statement of the complainant made before it, the Commission has arrived at a conclusion that complainant No.1 was running a dealership business of M/s. Reliance Industries for their livelihood and they are also engaged in the business of investment in property. Hence, the commercial space booked by the complainants cannot be said to be for the purposes of earning livelihood by self-employment or in other words the appellants are not consumers as defined under Section 2(1)(d) of the Act. In this background it would be necessary to note Section 2(1)(d) of the Act and it reads as under:

“*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) 12 [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 12 [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 13 [but does not include a person who avails of such services for any commercial purpose];

(Emphasis supplied by us)

10. The aforesaid definition has received the attention of the National Commission in the case of **Synco Textiles Pvt. Ltd. Vs. Greaves Cotton and Company Ltd.** reported in 1990 SCC OnLine NCDRC 3 : (1991) 1 CPJ 499 and approved by this Court in **Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers and others (2020) 2 SCC 265**. Whereunder this Court has followed the principles laid down in **Laxmi Engineering Works v. P.S.G. Industrial Institute** (1995) 3 SCC 583 whereunder it came to be held:

“10. A review of the provisions of the Act discloses that the quasi-judicial bodies/authorities/agencies created by the Act known as District Forums, State Commissions and the National Commission are not courts though invested with some of the powers of a civil court. They are quasi-judicial tribunals brought into existence to render inexpensive and speedy remedies to consumers. It is equally clear that these forums/commissions were not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional forum providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and services. The forum so created is uninhibited by the requirement of court fee or the formal procedures of a court. Any consumer can go and file a complaint. Complaint need not necessarily be filed by the

complainant himself; any recognized consumers' association can espouse his cause. Where a large number of consumers have a similar complaint, one or more can file a complaint on behalf of all. Even the Central Government and State Governments can act on his/their behalf. The idea was to help the consumers get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies. Indeed, the entire Act revolves round the consumer and is designed to protect his interest. The Act provides for "business-to-consumer" disputes and not for "business-to-business" disputes. This scheme of the Act, in our opinion, is relevant to and helps in interpreting the words that fall for consideration in this appeal.

11. Now coming back to the definition of the expression 'consumer' in Section 2(d), a consumer means insofar as is relevant for the purpose of this appeal, (i) a person who buys any goods for consideration; it is immaterial whether the consideration is paid or promised, or partly paid and partly promised, or whether the payment of consideration is deferred; (ii) a person who uses such goods with the approval of the person who buys such goods for consideration; (iii) but does not include a person who buys such goods for resale or for any commercial purpose. The expression 'resale' is clear enough. Controversy has, however, arisen with respect to meaning of the expression "commercial purpose". It is also not defined in the Act. In the absence of a definition, we have to go by its ordinary meaning. 'Commercial' denotes "pertaining to commerce" (*Chamber's Twentieth Century Dictionary*); it means "connected with, or engaged in commerce; mercantile; having profit as the main aim" (*Collins English Dictionary*) whereas the word 'commerce' means "financial transactions especially buying and selling of merchandise, on a large scale" (*Concise Oxford Dictionary*). The National Commission appears to have been taking a consistent view 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' within the meaning of Section 2(d) (i) of the Act. Broadly affirming the said view and more particularly with a view to obviate any confusion — the expression "large scale" is not a very precise expression — Parliament stepped in and added

the explanation to Section 2(d)(i) by Ordinance/Amendment Act, 1993. The explanation excludes certain purposes from the purview of the expression “commercial purpose” — a case of exception to an exception. Let us elaborate: a person who buys a typewriter or a car and uses them for his personal use is certainly a consumer but a person who buys a typewriter or a car for typing others’ work for consideration or for plying the car as a taxi can be said to be using the typewriter/ car for a commercial purpose. The explanation however clarifies that in certain situations, purchase of goods for “commercial purpose” would not yet take the purchaser out of the definition of expression ‘consumer’. If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment, such purchaser of goods is yet a ‘consumer’. In the illustration given above, if the purchaser himself works on typewriter or plies the car as a taxi himself, he does not cease to be a consumer. In other words, if the buyer of goods uses them himself, i.e., by self-employment, for earning his livelihood, it would not be treated as a “commercial purpose” and he does not cease to be a consumer for the purposes of the Act. The explanation reduces the question, what is a “commercial purpose”, to a question of fact to be decided in the facts of each case. It is not the value of the goods that matters but the purpose to which the goods bought are put to. The several words employed in the explanation, viz., “uses them by himself”, “exclusively for the purpose of earning his livelihood” and “by means of self-employment” make the intention of Parliament abundantly clear, that the goods bought must be used by the buyer himself, by employing himself for earning his livelihood. A few more illustrations would serve to emphasise what we say. A person who purchases an auto-rickshaw to ply it himself on hire for earning his livelihood would be a consumer. Similarly, a purchaser of a truck who purchases it for plying it as a public carrier by himself would be a consumer. A person who purchases a lathe machine or other machine to operate it himself for earning his livelihood would be a consumer. (In the above illustrations, if such buyer takes the assistance of one or two persons to assist/help him in operating the vehicle or machinery, he does not cease to be a consumer.) As against this a person who purchases an auto-rickshaw, a car or a lathe machine

or other machine to be plied or operated exclusively by another person would not be a consumer. This is the necessary limitation flowing from the expressions “used by him”, and “by means of self-employment” in the explanation. The ambiguity in the meaning of the words “for the purpose of earning his livelihood” is explained and clarified by the other two sets of words.

15. In *Lucknow Development Authority v. M.K. Gupta* [(1994) 1 SCC 243] the question was whether a public authority engaged in constructing and selling houses can be said to be rendering a ‘service’ and whether the person purchasing such houses can be called a ‘consumer’ within the meaning of the said definition. While answering the question in the affirmative, a Bench of this Court (Kuldip Singh and R.M. Sahai, JJ.) also examined the scheme and object of the Act and the ambit of the definition of the expression ‘consumer’. The following observations are apposite: (SCC pp. 251-54, paras 2 and 3)

“To begin with the preamble of the Act, which can afford useful assistance to ascertain the legislative intention, it was enacted, ‘to provide for the protection of the interest of consumers’. Use of the word ‘protection’ furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled view that a preamble cannot control otherwise plain meaning of a provision. In fact the law meets long-felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory.

The word ‘consumer’ is a comprehensive expression. It extends from a person who buys any commodity to consume either as eatable or otherwise from a shop, business house, corporation, store, fair price shop to use of private or public services. In *Oxford Dictionary* a consumer is defined as, ‘a purchaser of goods or services’. In *Black’s Law Dictionary* it is explained to mean, ‘one who consumes. Individuals who purchase, use, maintain, and dispose of products and services. A member of that broad class of people who are affected by pricing policies, financing practices, quality of goods and services,

credit reporting, debt collection, and other trade practices for which State and Federal Consumer Protection Laws are enacted.’ The Act opts for no less wider definition. It reads as under:

‘ “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 payment, when such services are availed of with the approval of the first mentioned person;

Explanation.— For the purposes of sub-clause (i), “commercial purpose” does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;’

It is in two parts. The first deals with goods and the other with services. Both parts first declare the meaning of goods and services by use of wide expressions. Their ambit is further enlarged by use of inclusive clause. For instance, it is not only purchaser of goods or hirer of services but even those who use the goods or who are beneficiaries of services with approval of the person who purchased the goods or who hired services are included in it. The legislature has taken precaution not only to define ‘complaint’, ‘complainant’, ‘consumer’ but even to mention in detail what would amount to unfair trade practice by giving an elaborate definition in clause (r) and even to define ‘defect’ and ‘deficiency’ by clauses (f) and (g) for which a consumer can approach

the Commission. The Act thus aims to protect the economic interest of a consumer as understood in commercial sense as a purchaser of goods and in the larger sense of user of services.

21. We must, therefore, hold that:

(i) The explanation added by the Consumer Protection (Amendment) Act 50 of 1993 (replacing Ordinance 24 of 1993) with effect from 18-6-1993 is clarificatory in nature and applies to all pending proceedings.

(ii) Whether the purpose for which a person has bought goods is a “commercial purpose” within the meaning of the definition of expression ‘consumer’ in Section 2(d) of the Act is always a question of fact to be decided in the facts and circumstances of each case.

(iii) A person who buys goods and uses them himself, exclusively for the purpose of earning his livelihood, by means of self-employment is within the definition of the expression ‘consumer’.”

11. A plain reading of the expression “consumer” indicates that any person who buys any goods for consideration which has been paid or promised or partly paid and partly promised under any system of deferred payment and includes any user of such goods other than the person who buy such goods. 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 or services for resale or for any commercial purpose. It is amply clear from the above definition that the Parliament has excluded from the scope of ‘*Consumer*’ for igniting proceedings under the Act, a person who obtains goods or services for re-sale or for any commercial purpose. Going by the plain dictionary meaning of the words used in the definition section the intention of Parliament must be understood to be to exclude from the scope of the expression “consumer” any person who buys goods for the purpose of their being used in any activity engaged on a large scale for the purpose of making profit. The words ‘for any commercial purpose’ must be understood as covering the cases other than those of resale of the goods. Thus, it is obvious, that Parliament intended to exclude from the scope of definition not merely persons who obtain goods for resale but also those who purchase goods with a view to using such goods for carrying on any activity

on a large scale for the purpose of earning profit. Thus, persons buying goods either for resale or for use in large scale profit making activity will not be a consumer entitled to protection under the Act, which would be a plain interpretation of this definition clause. The intention of the Parliament as can be gathered from the definition section is to deny the benefits of the Act to persons purchasing goods either for purpose of resale or for the purpose of being used in profit making activity engaged on a large scale.

12. The expression '*commercial purpose*' has not been defined under the Act. In the absence thereof we have to go by its ordinary meaning. 'Commercial' denotes "pertaining to commerce" (chambers 20th Century dictionary); it means 'connected' with or engaged in commerce; mercantile; "having profit as the main aim" (Collin's English Dictionary); relate to or is connected with trade and traffic or commerce in general, is occupied with business and commerce. The Explanation (added by Consumer Protection (Amendment) Act 50 of 1993 (replacing Ordinance of 24 of 1993 w.e.f. 18.06.1993) excludes certain purposes from the purview of the expression 'commercial purpose'- a case of explanation to an exception to amplify this definition by way of an illustration would certainly clear the clouds surrounding such interpretation. For instance, a person who buys a car for his personal use would certainly be a consumer, but if purchased for plying the car for commercial purposes namely as a taxi, it can be said that it is for a commercial purpose. However, the Explanation clarifies that even purchases in certain situations for 'commercial purposes' would not take within its sweep the purchaser out of the definition of expression 'consumer'. In other words, if the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment, such purchaser of goods would continue to be a 'consumer'. This court in the case of *Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers* (supra), has held that a straight jacket formula cannot be adopted in every case and the broad principles which can be curled out for determining whether an activity or transaction is for a commercial purpose would depend on facts and circumstances of each case. Thus, if the dominant purpose of purchasing the goods or services is for a profit motive and this fact is evident from 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**'. When there is an assertion in the complaint filed before the Consumer Court or Commission that such goods are purchased for earning livelihood, such complaint cannot be nipped at the bud and dismissed. Evidence tendered by parties will have to be evaluated on the basis of pleadings and thereafter conclusion be arrived at. Primarily it has to be seen as to whether the averments made in the complaint would suffice to examine the same on merits and in the event of answer being in the affirmative, it ought to proceed further. On the contrary, if the answer is the negative, such complaint can be dismissed at the threshold. Thus, it would depend on facts and circumstances of each case. There cannot be any defined formula with mathematical precision to examine the claims for non-suiting the complainant on account of such complaint not falling within the definition of the expression '**consumer**' as defined under Section 2(1)(d).

13. Now turning our attention to the facts on hand, namely, perusal of the complaint filed before the Commission would indicate that appellants have specifically pleaded that they were in search of office space "**for their self-employment and to run their business and earn their livelihood**". In the statement recorded on oath by the Commission, while hearing the maintainability of the complaint, the first appellant has stated that he was earlier engaged in the business of caustic soda as a dealer of M/S Reliance Industries and presently engaged in the business of investment/dealing in property. He has nowhere stated that he had proposed to purchase the office space from the respondent for the purpose of either selling the same for higher price or the said property was being purchased as an investment for being sold in future. The statement of the appellant was that he engaged in the business of investment/dealing in property would not *ipso facto* suggest or indicate the property proposed to be purchased from the respondent was for commercial purpose. Even according to the statement of the first appellant, he was earlier engaged in the business of caustic soda and now engaged in the business of investment/dealing in property. There will be varied eventualities. By way of illustration it can be noted that the appellants might have intended to take this property for running their business to eke

out their livelihood or open the office for the purposes of dealing in the existing business or the possibility of the proposed office being used as a corporate office or head office or branch office of their existing business which cannot be ruled out. It is in this background the averment made in paragraph 6 of their complaint filed before the Commission would acquire significance and the relevant averment has been noticed hereinabove and at the cost of repetition when perused it would clearly indicate that when the appellants were in search of office space "***for their self-employment and to run their business and earn their livelihood***" they had entered into an agreement to purchase the same from the original allottees. Neither this plea nor the statement made on oath recorded by the Commission would belie the stand of the appellants that they intended to purchase the office space for their livelihood. In this scenario, the finding recorded by the Commission in Paragraph 8 of impugned order is erroneous and contrary to the definition clause of the expression "***consumer***" as defined under section 2(1)(d).

14. It is an undisputed fact that respondent has agreed to sell the office space in the Vipul Business Park to the appellants. Record would also disclose that in all the appellants paid Rs.51,10,117/- or respondent had received the said amount from the appellants. Though, a faint attempt has been made by the appellants to contend that there was unilateral change namely the respondent had agreed to sell the office space 306 at third floor to office space No.814 in 8th floor, we are not inclined to entertain the said plea in as much as the agreement has been duly signed by the appellants and in token of having accepted the same they have affixed their signatures to the said agreement and it is too late in the day for the appellants to retrace their steps on this issue. The said contention stands rejected.

15. Clause 15 of the buyer's agreement would clearly indicate that the possession of the premises was agreed to be delivered within 24 months from the date of agreement which undisputedly had not taken place, or in other words the allotted office space was not delivered even after expiry of 24 months from the date of agreement. In fact, in the counter affidavit filed by the respondent an evasive denial has been made by contending that permissive possession of the commercial space had been offered

by the respondent to the appellants. However, it is not pleaded that the commercial space allotted to the appellants is ready for occupation. The statement of account dated 28.01.2014 forwarded to the appellants by the respondent would indicate the receipt of payment of Rs.51,10,117/- by the respondent. Though, respondent has received the payment towards service tax, same is not reflected in the statement of account. Be that as it may. On account of inaction of the respondent in not complying with their demand, appellants got issued a legal notice calling upon the respondent to refund Rs.93,62,025/- which is inclusive of the principal amount of Rs.51,10,117/- and Rs.42,52,143/- towards interests accrued thereon calculated @ 18% per annum and also demanded compensation of Rs.50,000.00/- towards mental agony by terminating the agreement.

16. In the normal course, we would have remitted the matter back to the Commission for adjudicating the complaint on merits in the light of finding recorded hereinabove. However, we desist from this attractive proposition for reasons more than one. Firstly, the dispute relates back to the year 2006; secondly, the appellants have already repudiated the contract. Hence, in this background directing the respondent to execute the sale deed in respect of the office premises would not arise, which is also not the claim of the claimant and only prayer which can be considered for being examined would relate to refund of the amount. It is not in dispute that in all the respondent has received a sum of Rs.51,10,117/- which is also admitted by the respondent in its counter affidavit but contending that instalments which was due and payable had not been remitted on time and as such interest is payable on the delayed payments. However, the receipt of the amount of Rs. 51,10,117/- is not disputed by respondent. There being no plea with regard to the building or commercial complex being ready for being occupied, having been raised by the respondent in its counter affidavit and the communication dated 25.01.2016 also not disclosing that the office premises proposed to be sold in favour of the appellants being ready to be occupied but only evidencing the fact that the permissive possession of premises was being offered, it cannot be presumed that possession of office premises which is ready to offer was being delivered to the appellants. Hence, to balance the equities, it would be appropriate to direct the respondent to refund the amount it has received from appellants with interest calculated @ 12% per annum which would

not only meet the ends of justice but would also offset the interest loss if at all, if any caused to the respondent on account of delayed payments of the instalments by the appellants and keeping in mind the appreciated value of the asset namely office premises which was proposed to be sold by the respondent to the appellant.

17. For the reasons afore-stated we allow this appeal, set aside the order dated 11.05.2015 passed by the National Consumer Disputes Redressal Commission in consumer complaint No.276 of 2015 and allow the complaint in part by directing respondent to refund sum of Rs.51,10,117/- with interest @ 12% per annum from the date of complaint till date of payment with litigation cost of Rs. one lakh.

Headnotes prepared by:
Ankit Gyan

Appeal allowed.