

## **Scope of Deficiency in Services and defects in goods under Consumer Protection Act, 1986**

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### **Abstract**

"Unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice. Unfair Trade Practices also includes deficiency in services and defects in goods. The definition of 'service' in the Consumer Protection Act, 1986 is in three parts. The main part is followed by inclusive clause and ends by exclusionary clauses. The main clause itself is very wide. It applies to any service made available to potential users. Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service. According to section 2 (i) of the Consumer Protection Act, "goods" means goods as defined in the Sale of Goods Act, 1930.

### **Introduction**

As we know Unfair Trade Practices in India is a burning Problem. Unfair Trade Practices arises due to deficiency in services and defects in goods. unfair trade practices is a practice which is misleading, deceptive and unlawful in nature adopted for the purpose of promoting sale or supply of a particular good or provision of a particular service. In other words, "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice.<sup>1</sup> Unfair Trade Practices also includes deficiency in services and defects in goods.

### **Services**

As per section 2 (o) of the Consumer Protection Act, 1986 services has been defined to mean services of any description which is made available to potential users and includes but

not limited to the provisions of facilities in connection with Banking, Financing, Insurance, Transport, Processing, Supply of electric and other energy, Board or lodging or both, Housing construction, Entertainment, Amusement, or the purveying of news and other information, but does not include the rendering of any services free of charges, or under a contract of personal services.

In the case of *Lucknow Development Authority v. M.K. Gupta*<sup>2</sup> it was observed that the definition of 'service' is in three parts. The main part is followed by inclusive clause and ends by exclusionary clauses. The main clause itself is very wide. It applies to any service made available to potential users. The words 'any' and 'potential' are significant. Both are of wide amplitude. The word 'any' dictionary means 'one or all or some'. In Black's law dictionary it is explained thus "word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'same' or 'one' and its meaning in a given statute depends upon the context and subject matter of statute." The other word 'potential' is again very wide. In Oxford dictionary it is defined as 'capable of coming into being, possibility'. In Black's law Dictionary it is defined as 'extending in possibility but not in act. Naturally and probably expected to come into existence at some future time, though not now existing; for example, the future product of the grain or trees already planted, or the successive future installments or payments on a contract or engagement, already made. In other words, 'service' which is not only extended to actual user but those who are capable of using it are covered in the definition. The clause is thus very wide and extends to any or all actual or potential users. But the legislature did not stop there. It expanded the meaning of the word further in modern sense by extending it to even such facilities as are available to a consumer in connection with banking, financing etc. Each of these is wide ranging activities in day-to-day life. The intention of the legislature is thus clear to protect a consumer against services rendered even by statutory bodies. The test, therefore, is not if a person against whom complaint is made is a statutory body but whether the nature of the duty and function performed by it is service or even facility.

## Deficiency

As per section 2 (g) of the Consumer Protection Act, 1986, 'deficiency' has been defined as under:

means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

In the case of *Lucknow Development Authority v. M.K. Gupta*<sup>3</sup> – it was discussed that construction of a house or flat is for the benefit of person for whom it is constructed. Any defect in construction actively would be denial of comfort and service to a consumer. When possession of property is not delivered within stipulated period the delay so caused is denial of service. Such dispute and claims or claims are not in respect of immovable property but deficiency in rendering of services of standard, quality or grade. Such deficiencies shall be called as Unfair Trade Practices.

In another a case *Joy @ sebastain Consumer v. Disputes Redressal Forum, Kannur*<sup>4</sup>- in this case there was material indicated violation of covenant of the agreement relating to the quality of the trees. Hence, it held not amounting to unfair trade practices and deficiency in the services. Proper remedy for the respondent held available by filing a suit before a court of competent jurisdiction either for the damages or for such other appropriate relief rather than approaching the forum by making a complaint. As per section 2(f) of the Consumer Protection Act, 1986 the term 'defect' has specific connotation. A defect in title to property will not fall under any of the defects enumerated in 2(f) of the Consumer Protection Act, 1986.

## Defect in Goods

### Goods

According to section 2 (i) of the Consumer Protection Act, "goods" means goods as defined in the Sale of Goods Act, 1930 (3 of 1930).

In case of *State of Bombay & Others v. The Hospital Mazdoor Sabha & others*<sup>5</sup> - it was observed that the purpose of inclusive clause is to enlarge the meaning of the words or phrases. Include is generally used in interpretation clauses to enlarge the meaning of the words or phrases occurring in the body of the statute, and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the definition clause declares that they shall include.

But Consumer Protection Act, 1986 does not cover definition of goods as provided in the Food safety and Standards Act. According to clause (j) of sub-section (1) of section 3 of the Food Safety and Standards Act, 2006 the term "food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food, to the extent its natural form, resulting from the growing, raising, cultivation, picking, harvesting, collection or catching in the hands of a person other than a farmer or fisherman, genetically modified or engineered food or food containing such ingredients, packaged drinking water, alcoholic drink, chewing gum, infant food, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances.

Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance, or quality.

On the other hand, the Sales of Goods Act, 1930 also provides the definition of "Goods". As per clause (7) of section 2 of the Sale of Goods Act, 'goods' means –

- A. Every kind of movable property other than actionable claims and money; and
- B. Includes –
  1. Stocks and shares,
  2. Growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale.

The 'Stocks and Shares' are specially included in the term goods as per definition given in the section 2 (7) of the Sales of Goods Act, 1930, and, therefore, the complaint regarding any defect in the shares is maintainable before the consumer forum established under the Consumer Protection Act. A perusal of the definition of the goods shows that the shares are goods. To conclude it can be safely said that a complaint of unfair trade practices can be made by a consumer both in respect of supply of goods as well as in relation to the providing of services for consideration.<sup>6</sup>

In the case of *Dr. Rashmi Choudhry V. Tata Motors Private Ltd.*<sup>7</sup> - there was a question of manufacturing defect because right hand side Tyre wearing out excessively and noise. In this case it was observed that it appears that excessive wearing of only one Tyre, on one side, is due to some defect in the chassis and respondent failed to find out the exact cause of this excessive wearing of Tyre and respondent no. 01 despite having taken plea that it would be producing affidavit of its service engineer failed to do so. Therefore, order set aside, and appellant deserves to be awarded money equivalent to cost of new chassis and deserves to be suitably compensated for mental torture and harassment because of indifferent and callous attitude of respondents in not attending of her complaints and even denying receipt of registered letter in which she gave full details of her grievances.

Whether any defect in relation to immovable goods such as a house or building can be entertained under the Consumer Protection Act? Where it was urged that the applicability of the Consumer Protection Act having been confined to movable goods only, a complaint filed for any defect in relation to immovable goods such as house or building or allotment of site could not have been entertained by the Redressal Commission constituted under the Consumer Protection Act, it has been held by the Supreme Court of India that the submission does not appear to be well founded, as the respondents were aggrieved either by delay in delivery of possession of house or use of sub-standard material, etc., and therefore, they claimed 'deficiency in service' rendered by the appellant and the jurisdiction of the Commission could not be ousted because even though it was service it related to immovable property.<sup>8</sup>

In the case *Haryana State Electricity Board v. Dinesh Kumar*<sup>9</sup> it was observed regarding supply of electricity, there is no doubt that electricity is 'goods and the complainant

was buying electricity from the respondent for a commercial purpose. It was observed that it is a well-known principle of construction that the special law overrides the general law. Even if generally under other statutes, the supply of electric energy may be tantamount to sale of goods, still when the consumer protection Act specially places the same within the definition of service the same would have an overriding effect. General considerations under the provisions would, thus, be of little relevance. Therefore, on the larger principle, it must be held that even though ordinary or under other statutes the supply of the electrical energy may come within the ambit of the sales of goods, yet for the special purposes of this Act, it would be excluded there from. If the Act has classified the same as service, then the mandate of the legislature must be given its full effect.

### **Defect**

In the case *Kuldip Singh Kalra v. Roshan Pal Lal*<sup>10</sup> - it was held that the 'Defect' means any fault or imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in the force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods, as per section 2(f) of the Consumer Protection Act, 1986. The term 'defect' has specific connotation. A defect in title to property will not fall under any of the defects enumerated in 2(f). Where the opposite party against whom the complaint is made under the Consumer Protection Act is only a middleman who brought together the buyers and sellers of cars and received his commission for the service rendered, he cannot be deemed to be a trader as specified in section 2(q) of the Act because he is neither the buyer nor the seller of the property and it is not his function or responsibility to verify the title of the seller in the property. That is left to the buyer to verify and satisfy himself that the seller has the title and consequently the capacity to transfer and sell a particular property, *viz.*, property in which the seller did not have proper title would not constitute a defective goods as defined in the Act. A defect to the title in the property does not fall within the ambit of section 2(f) of the Consumer Protection Act.

The complaint who alleges unfair trade practices as a defect in the vehicle and claiming replacement or compensation under Consumer Protection Act should establish that there is some manufacturing defect. In a case where the report of the Automotive Research

association does not attribute the accident to any mechanical defect or defects or the deficiency of the tie-rod in the Maruti van and suggested that the evidence points to a rear impact of the highest severity having triggered off a chain of events, resulting in the fracture of the tie-rod of the vehicle and the accident, it has been held that the complainants have failed to establish that there was any defect or deficiency in the van sold by the opposite party to them and also that the accident resulting in injury and loss to the complainants was caused on account of mechanical defect or deficiency in the van and therefore, the complaint is liable to be dismissed.<sup>11</sup>

In another a case of *Devanand Gehlot v. Rajasthan Patrika*<sup>12</sup> - In this case question was that whether the supply of a newspaper containing allegedly wrong news in respect of one of the buyers of that newspaper constituted supply of defective goods to the buyer? The defects in a newspaper, to constitute it as defective goods must pertain to the quality of its paper and printing. It cannot relate to the contents of the newspaper; its news and views and the manner of their display which are the exclusive preserve of the editor. On the other hand, the news and views constitute the service which a newspaper renders to its readers, the news and views contained in the newspaper cannot be described as goods. Consequently, the alleged false news item about the complainant/appellant in the 'Rajasthan Patrika' does not make the newspaper as 'defective'.

In the case of *Ram Singh v. Krishna Automobiles and others*<sup>13</sup> - there was a manufacturing defect in the JCB machine. The brand new JCB machine purchased by the complainant started giving problems just after four days of its purchase and the defects were not repaired, despite making efforts by the officials of the opposite parties on several occasions. Plea of the opposite party that the complainant has not produce any expert evidence to prove that the defects in the machine, were manufacturing defects. It was held that if such a defect occurs in a newly manufactured vehicle, then the onus is generally upon the manufacturer to prove that it is free from any defect and that the defect in the same was not a manufacturing one.<sup>1</sup>

In another a case *Ram Kumar v. Lilac Medicare Pvt. Ltd and others*<sup>14</sup> - the complainant purchased machinery for his Diagnostic & Clinical Laboratory which was defective. Plea of the OP that machine purchased for the commercial purpose and hence complaint not maintainable. It was observed that the complainant falls within the purview of consumer as defined in section 2(7) of the Act because the complainant purchased the machine exclusively for the purpose of earning livelihood and self-employment.

### Conclusion

From the above discussion it is crystal clear that deficiency in the services and defects in the goods both are elements of Unfair Trade Practices. The definition of the goods as provided in the Consumer Protection Act, 1986 is not complete. Because, the Consumer Protection Act, 1986 says for the goods as defined in the Sales of Goods Act, 1930. The definition of goods should also include "food" as defined in clause (j) of sub-section (1) of section 3 of the Food Safety and Standards Act, 2006. On the other hand, the term 'deficiency' should also include any act of negligence or omission or commission by any person which causes loss or injury to the consumer.

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<sup>1</sup>. Section 2(r) of the Consumer Protection Act, 1986

<sup>2</sup>. AIR 1994 SC 787

<sup>3</sup>. Ibid

<sup>4</sup>. 2018 (1) ILR (Kerla)

<sup>5</sup>. AIR 1960 SC 610

<sup>6</sup>. II (1992) CPJ 510 (NC)

<sup>7</sup>. 2016 Latest HLJ (HP) 433

<sup>8</sup>. Supra note 7 at page 11

<sup>9</sup>. II (1991) CPJ 38 (43) (Har)

<sup>10</sup>. II (1993) CPJ 170 (171-172) (NC)

<sup>11</sup>. I (1992) CPJ 274

<sup>12</sup>. I (1991) CPJ 599

<sup>13</sup>. 2018 (3) CLT 472 (PB)

<sup>14</sup>. 2018 (3) CLT 339 (HR)