



Key Updates

Recent Judgements

1. Self-consumption or utilization of the property is a matter of evidence and the burden of proof is on the Defendant - Sunil Kohli & Anr. v. M/s Purearth Infrastructure Ltd. decided by the Hon'ble Supreme Court of India on 01.07.2019.

Appeal was filed under Section 23 of the Consumer Protection Act, 1986, in the Hon'ble Supreme Court challenging the judgment and final Order dated 03.04.2018 passed by the Hon'ble National Consumer Disputes Redressal Commission (NCDRC) in Consumer Complaint No. 62 of 2013 and also against the order dated 01.05.2018 passed by the NCDRC dismissing the Review Application No. 129 of 2018.

The Complainants had executed a contract with the Defendant whereby the latter agreed to give possession of a shop to the Complainants within two years from the date of commencement. However, the Defendant failed to give possession as the Completion Certificate was awaited even after the expiry of two years.

The Defendant claimed that the Complainants are excluded from the substantive part of the definition of Section 2(1)(d)(i) of the Act as the said shop would be used for commercial purposes.

The NCDRC allowed the appeal by observing that the Complainants were consumers under the Act. The NCDRC perused the Affidavit of Evidence to decide whether the said shop would be used as self-employment or self-use. The Affidavit of Evidence disclosed that the Complainant was serving the Red Cross, charitable organization, and presently unemployed, hence it cannot be ruled that the Complainants would not come within the definition of "consumer" under the Act.

The Hon'ble NCDRC referred to the judgment in *Cheema Engineering Services v. Rajan Singh*, (1997)1SCC131, wherein, the Hon'ble Supreme Court observed, that from the explanation of sub-clause (i) of Section 2(1)(d), any goods purchased by a consumer and used by him is not included in the ambit of commercial purpose. The question which arose in *Cheema Engineering Services* was whether the machine bought by the respondent was for the purpose of self-employment. Since self-employment is not defined, it is considered to be a matter of evidence and the burden of proof is on the Defendant. The Hon'ble Supreme Court found that the NCDRC had dealt only with the facts that whether the Complainants were consumers or not and whether the Complaint was maintainable or not. The court held that the complainants were consumers and that the complaints were maintainable. The Court then remitted the matter back to the NCDRC to consider other issues as well and dispose the case as soon as possible.

2. Only NCDRC has power to set aside ex-parte orders. – Samaresh Prasad Chowdhury v. UCO Banks & Ors., decided by the Hon'ble Supreme Court on 21.10.2019.

The Hon'ble Supreme Court allowed an appeal filed by Judicial Member of the State Consumer Disputes Redressal Commission, West Bengal and upheld the order passed by the Judicial



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Member which the High Court had set aside.

The first respondent sought to set aside the order of the member contending that it was passed ex-parte, whereas the contention of the appellant was that the single judge had made observations against him without considering true sense of facts and law. The Ld. Counsel for the appellant submitted that as far as State commission is concerned there is no power to set aside the ex-parte order, only the National Commission was empowered to set aside such orders under section 22A of the Consumer Protection Act, 1986. ‘

The two judge bench of Supreme Court comprising of Justice KM Joseph and Justice AS Bopanna held that:

*“There is merit in the case of the appellant. The observations which have been made against the appellant herein appear to have been unjustified having regard to the actual statutory provisions contained in the Act in question, as interpreted by this court in a three-judge Bench decision in **Rajeev Hitendra Pathak vs. Achyut Kashinath Karekar, (2011) 9 SCC 541***

.” 3.NCDRC directs Developer to refund the money as customers cannot be made to wait indefinitely for possession - Alok Kumar vs M/S Golden Peacock Residency Private Limited & Anr. decided by the Hon’ble NCDRC on 06.09.2019.

The [Hon’ble National Consumer Dispute Redressal Commission](#) has held that the customers cannot be made to wait indefinitely for the possession and directed the Respondents to pay the compensation sought by the Complainant along with an additional compensation of Rs. 25,000/- within 4 weeks and if not paid in the given time then an interest of 14% p.a. would be applied on the amount.

The Complainant had booked an apartment and executed a flat buyer’s agreement with the Developer on 19.02.2013 according to which he would get the possession within 36 months with an additional grace period of 6 months which ended on 19.08.2016.

However, when the Complainant visited the construction site in December, 2015 he got to know that there had been no construction work since January, 2015. When he visited the developer’s office to terminate the contract with them, he was assured that he would get his apartment. Again, when he visited the site in January, 2017, he realized that no work had been carried out and when he visited the site in April, 2018 he found that the site was locked. The Complainant then issued a legal notice to the opposite parties seeking the exact date on which he would get the possession, which was received back with the remarks “refused” and “left”.

The Complainant then approached the Hon’ble Commission and presented all the documents as evidence. The Hon’ble Commission relied on the judgement of **Pioneer Urban Land & Infrastructure Ltd. vs Govinadan**, in which the Hon’ble Supreme Court held that, *“A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder.”*

The Hon’ble Commission also considered the case of **Kolkata West International City vs Devasis Rudra**, wherein the Hon’ble Supreme Court held, *“It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession.”*

Hence the Hon’ble Commission held that in the instant case as well the Complainant cannot be made to wait indefinitely for possession of the unit. It has already been 6 years since the contract has been executed and the construction is not even complete yet. Thus, the Hon’ble Commission directed the opposite parties to pay the compensation sought by the complainant.

Bulletin Report

Report of the Steering Committee on Fintech Related Issues, Department of Economic Affairs, Ministry of Finance, Government of India

The Steering Committee on Fintech Related Issues was mandated to study the Fintech industry while focusing on (a) the development of Fintech globally and as it is growing in India, (b) the regulatory climate for Fintech in India, and (c) the potential opportunities of development of Fintech in India.

The Steering Committee decided to organize its work and recommendations in the following broad classes:

(a) Committee recommended the following measures required for expanding Fintech services in India -

1. Non-discriminatory regulatory barriers in the digital payments infrastructure sector needs to be developed and implemented.
2. Use of Fintech for Cybersecurity, fraud control & anti-money laundering.
3. Inclusion of agricultural activities in the Credit Guarantee Scheme.

4. Use of Fintech for trusted E-invoice system for MSMEs– Committee suggested Goods and Services Tax Network (GSTN) data integrated with Trade Receivables Discounting System (TReDS) exchanges could form the basis of a flow-based lending system for MSMEs by banks and NBFCs
5. Removing restrictions and developing a marketplace model for debt financing by reforming the present P2P lending mechanisms
6. Virtual banking where banks don't have to set up branches yet provide full scale banking services
7. Dematerialization of accounts in post offices, fixed deposits, other forms of small saving certificates, Gold deposit, Certificates issued under GMS, deposits made under schemes like Sukanya Samriddhi Yojana, etc
8. Liberalizing the current Pre-Paid Institution (PPI) system
9. Reformed KYC process as per the guidelines given by the Hon'ble Supreme Court in the Justice Puttaswamy (Retd.) and Anr. v Union of India and Ors.
10. Use of unconventional data sources for increasing access to credit

(b) Committee recommended the following measures required for expanding Gov-tech services which would have implications for expansion of Fintech services are -

1. Public Sector Financial Sector Enterprises are encouraged to keep an Innovation team
2. Use of AI and Block chain methods by the public sector
3. Use of drones in the insurance and lending industry for the agricultural sector and digitalization of land records
4. Open APIs and government data subject to privacy laws should be implemented
5. Neutral yet competitive approach for Fintech firms, financial and non-financial institutions
6. Regulating sandbox and planning a high impact Fintech services for India
7. Use of Central-KYC
8. Implementation of Fintech oriented Consumer protection framework.
9. Use of Regulatory-Tech and Supervisory-Tech for financial regulators.

(c) The following industries/institutions were recommended by the Committee to be included in Fintech -

1. Lending by Co-operatives and other financial institutions
2. Guidelines to leverage Fintech in agri-insurance/PMFBY
3. Micro-Insurance and Employees Insurance
4. Pension
5. Common platform for small saving scheme
6. Bank Education loans

(d) Committee recommended the following organizational and administrative measures by Government of India for promoting and monitoring expansion of fintech and govt-tech -

1. Cooperation with leading nations for regulating Fintech
2. Fintech advisory council in each financial sector regulator
3. Data Protection laws and Capacity building
4. Inter – regulatory cooperation in all; levels – firms to Ministerial
5. Set up of Inter-Ministerial Steering Committee on fintech in the financial sector, set up of inter-ministerial group of Fintech, and also set up of Centres of Excellence on fintech in National Institutions



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