

When is buying property not a commercial act?

Buying a house to rent out is not a commercial activity which denies a homeowner the rights of a consumer, rules NCDRC



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The Consumer Protection Act was enacted in the year 1986 by Parliament to protect the interests and rights of consumers. One of the objectives of the Act was to provide the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers.

Before 1993, sale of flats, villas, housing agreements for construction and sale of the constructed structure weren't covered by the Act. However, a very vast amendment was made to the Act in 1993, wherein apart from goods, many services were also brought under the purview of the Act. These included housing services by construction companies and housing boards. It was then that the buyer of an apartment became a consumer

within the meaning of the Act. Housing services provided by construction companies, builders, developers and housing boards etc came under the jurisdiction of the consumer dispute resolution forums across the country. As a consequence, consumer courts could resolve disputes over housing agreements and provide relief to the complainant(s).

An interesting question that often came up in the courts of law was related to the proper interpretation of the definition of 'consumer'. According to the Act, this definition specifically excludes the person who avails any services for any 'commercial purpose'. In the context of sale-purchase transaction of a property, this aspect of the definition in relation to 'commercial purpose' has often been construed to mean that the Act would not be applicable to any investment made in real estate with the intention to earn profit.

However, a recent judgment by National Consumer Disputes Redressal Commission (NCDRC) discussed a matter related to

commercial investment. The question was: would a transaction be considered 'commercial' if (a) a person booked an apartment not for his immediate use but for letting it out after he got possession or (b) he purchased the property as an investment, intending to make a profit after selling it later? Could such a purchaser then be a consumer as per the definition provided under the Consumer Protection Act, 1986?

The case in question came up for the consideration of NCDRC in the case of Santosh Johari and others (appellant) vs Unitech Ltd (respondent) wherein it was contended by the respondent that since some of the complainants move into their own homes only after their retirement and prefer to rent out the properties after taking possession; their investment has been made for a commercial purpose. Therefore, it was argued, that the complainant(s) could not be called 'consumers' within the meaning of the Act.

The commission did not find any merit in this contention and

reiterated the view taken by the Supreme Court in this regard that in the absence of a definition of 'commercial purpose', there was a need to go by the ordinary dictionary meaning wherein 'commercial' denoted 'pertaining to commerce' and meant 'connected with, or

engaged in commerce; mercantile, having profit as the main aim'. SC had also said that the word 'commerce' meant financial transactions, especially buying and selling of merchandise on a large scale. The apex court also opined that as far as hiring or availing services were con-

cerned, a person could be said to have hired services only if he was related to business or commerce in which he was engaged. To exclude a hirer from the ambit of the act, services should be availed for promoting, advancing or augmenting an activity, the primary aim of which was to earn profit with use of the said services.

Considering SC's observations, NCDRC held the purchase of a house can only be for a 'commercial purpose' if the purchaser is engaged in the business of purchasing and selling houses or plots on a regular basis, solely with a view to make profit by way of sale of such houses. If, the house is purchased purely as an investment and the purchaser is not undertaking the trading of houses on regular basis, then it would be difficult to say that he had purchased it for 'commercial purpose'.

The rationale of the court was that people invested surplus money in bank deposits, shares etc as they don't want money to sit in their bank accounts. Therefore, one was free to invest in property to get better returns by renting it out or selling it at a future date. It could be said that a purchaser would still be a consumer even if he purchased a house to rent or as an investment for maximum returns. If this activity of purchasing and selling houses becomes a business, he would cease to be a consumer.

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