

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 355 OF 2023

(Against the Order dated 07/10/2022 in Complaint No. 278/2018 of the State Commission
Uttar Pradesh)

1. ANAND KUMAR

R/O 103/2, SUNDER BAGH, HEWET ROAD LUCKNOWAppellant(s)

Versus

1. DIVISIONAL MANAGER, NATIONAL INSURANCE
COMPANY LTD. & 3 ORS.

DIVISION II, SF-304, S.CROSS ROAD PLAZA,
BADSHAHNAGAR CROSSING
MAHANAGAR, LUCKNOW

2. THE BRANCH MANAGER

NATIONAL INS. CO. LTD. BRANCH-IV, GAUTAM BUDH
MARG

LUCKNOW-226001

3. THE BRANCH MANAGER

BANK OF INDIA, NEAR SHUBHAM CINEMA, AWADH
MARKET, 5 CANTT RD, KAISERBAGH
LUCKNOW

4. THE ZONAL MANAGER

BANK OF INDIA, STAR HOUSE, GOMTTINAGAR
LUCKNOW

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

HON'BLE DR. SADHNA SHANKER, MEMBER

FOR THE APPELLANT : MR. A. K. ANAND, ADVOCATE

FOR THE RESPONDENT : FOR THE RESPONDENTS NO. 1 & 2 : MS. SHANTHA DEVI
RAMAN, ADVOCATE WITH

MR. MAYANK R. YADAV, ADVOCATE

FOR THE RESPONDENTS NO. 3 & 4 : MR. ADITYA KUMAR,
ADVOCATE WITH

MS. ANJANA NIGAM, ADVOCATE

MR. ILA NATH, ADVOCATE

Dated : 19 August 2024

ORDER

DR. SADHNA SHANKER, MEMBER

1. The present appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (for short "the Act") by Anand Kumar (hereinafter referred to as the "complainant") assailing the Order dated 07.10.2022 passed by the State Consumer Disputes Redressal

Commission, U.P. (hereinafter referred to as the “State Commission”) in complaint No. 278 of 2018, whereby the complaint was rejected.

2. We have heard the learned counsel for the appellant (hereinafter referred to as the ‘complainant’), learned counsel for the National Insurance Company Ltd. (hereinafter referred to as the ‘insurance company’), learned counsel for the Bank of India (hereinafter referred to as the ‘bank’) and have perused the record.
3. The facts, in brief, are that the complainant took home loan of Rs. 22 lakh for purchase of H. No. 103/2, Sunderbag, Hewet Road, Lucknow from the bank and as a statutory requirements, the bank had purchased ‘Home Loan Suraksha Bima’ for the insurance of the house in question for a sum insured of Rs. 30 lakh, through their corporate partners ‘National Insurance Company Limited’. The premium of Rs.15,716/- was paid. The policy was valid from 28.03.2016 to 27.03.2031. It is alleged that the original policy was retained by the bank and as such the complainants had no opportunity to go through the contents of it, including its terms and conditions. It is mentioned in the complaint that when a loan is applied in the bank, an appraisal note was prepared by an officer, wherein the rental income of the house in question was mentioned as Rs.18,000/-(Rupees Eighteen thousand) per month and in the lease agreement dated 21.11.2009 it was mentioned to justify the financial viability of the loan and also the repayment capacity of the borrowers. In the said agreement it was disclosed by the complainant to the banker that the house shall be let out to M/s Gem Hotel Products on a rent of Rs.18,000/- per month and the relevant agreement dated 21.11.2009 was also supplied to the bank. It is alleged that the complainant did not conceal the prospective use of the house for commercial purpose. The said house caught fire on 03.09.2017 and the incident of fire including total loss was intimated to the insurance company on the same date. The complainants also sent a formal claim letter dated 05.01.2018 to the insurance company with the details of loss of Rs.21,14,000/-. The insurance company repudiated the claim vide their letter dated 24.05.2018 on the ground that ‘Home Loan Suraksha Policy’ did not cover any non-residential usage of the building. It is contended by the complainants that the proposer of the insurance policy was the financier ‘Bank of India’ and ‘the National Insurance Company’ was its corporate partner and in the purchase of policy the role of complainants was only for the payment of premium. It is alleged by the complainants that the insurance company has wrongly repudiated the claim as the purpose of the house in question was really never disclosed to the corporate partner of the insurance company.
4. The complainants filed a complaint before the State Commission with the following prayer:-
 - a. To approve the claim of the complainant and pay them value of the damages to the building due to fire, that is Rs.21,14,000/- (Twenty one lacs fourteen thousand only) as arrived by the valuer’s vide their report dated 02.12.2017 (Annexure-V).
 - b. To pay the complainant the interest @20% on the claim amount, for the delay on payment of claim, till the actual payment is made to the complainant;
 - c. To pay to the complainants a sum of Rs.20,00,000/- (Twenty Lac) for mental agony, loss of reputation, because of delay in payment of claim and also to

compensate the exorbitant rates of interest paid to raise the short term funds impending payment of claim, with the expenditure involved in filling the complaint with professional charges of the advocate.

5. The State Commission, vide its order dated 07.10.2022, rejected the complaint.
6. Feeling aggrieved by the order dated 07.10.2022, the complainant has filed the present appeal before this Commission with the prayer:
 - a. Allow the appeal and set aside/quash the judgment and order date 07.10.2022 passed in Complaint Case No.278 of 2018 by the Ld. State Commission, Lucknow in Anand Kumar & Anr. Vs. National Insurance Co. Ltd. & Anr. and allow the subject Complaint.
 - b. Allow the subject claim wrongly repudiated and also allow the payment of the claim Rs.21,14,000/- to the complainant as per the valuation report.
 - c. Allow the payment of interest @20% on the claim amount, for the delay in payment of the claim till the actual payment is made to the complainant.
 - d. Allow the Complainant a sum of Rs.20,00,000/- as compensation for mental agony, and loss of repudiation, because of the delay in payment of the claim and to compensate the exorbitant rates of interest paid to raise the short-term funds' impending payment of the claim with the cost of filling the complaint.
 - e. Award the cost of appeal in favour of the Appellants and;
 - f. Pass such other order/s as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the instant case, in the interest of justice.

7. The learned counsel for the complainant has argued that prior to sanctioning the home loan, the complainant had submitted a rental agreement executed with M/s Gem Hotel Product to the bank and in the agreement, it was stated that the tenant (M/s Gem Hotel Product) would use the ground floor of the property (to be purchased through bank finance) for warehouse purposes at a monthly rent of Rs.18,000/-. The bank duly acknowledged and accepted this rent agreement during their assessment and subsequently, a home loan of Rs.22 lakh was sanctioned to the complainant on 1.12.2009 for the purchase and renovation of house in question. The bank was aware that the ground floor of the property is leased to a company for warehouse purposes. After the house was renovated, the tenant (M/s Gem Hotel Product) began storing their stocks in the ground floor warehouse, as per the rent agreement. The tenant (M/s Gem Hotel Product) also insured its stocks under a Traditional Business Policy with National Insurance Co. Pvt. Ltd. in 2009. It was further argued that as per the terms of sanction, the bank had taken out a Home Loan Suraksha Insurance Policy for Rs.30 lakh with National Insurance Co. Pvt. Ltd. and the premium amount of Rs. 15,716/- was debited from the complainant's account. He further argued that the insurance proposal was completed and signed by the bank, and retained by them.

Further, learned counsel for the complainant argued that National Insurance Co. Pvt. Ltd. had been conducting regular inspections since 2009 for the Traditional Business Policy covering

the stocks in the ground floor warehouse. Additionally, they began servicing the Home Loan Suraksha Insurance Policy from 2016 onwards, covering the subject property. Therefore, the commercial use of the ground floor by the tenant (M/s Gem Hotel Product) was well within the knowledge of the National Insurance Co. Pvt. Ltd. when they accepted the insurance proposal in 2016. Apart from it, the insurance company itself had issued a Traditional Business Policy in 2009 to cover the stocks stored in the ground floor warehouse. Therefore, the complainant was not at fault and the repudiation made by the insurance company is not sustainable in the eye of law.

8. Learned counsel for the insurance company has argued that the complainants took home loan to purchase the house for residence purpose only and the insurance company had insured the subject house as a residential house and the insurance cover does not include any commercial building or commercial activities in the said premises. The 'Home Loan Suraksha Bima Policy' is applicable and covers only those premises/buildings which are used for the residential purpose. The terms and conditions of the policy clearly shows at 'C: Exclusions from Section-1(10) that 'this insurance does not cover loss or damages to any non-residential property'. He further argued that in number of judgments, it has been held that when a home loan is obtained for residential purposes, but the property is utilized for commercial purposes, there is no liability upon the insurance company and it is a clear violation of the terms and conditions of contract of insurance. Reliance is placed on:

(i) New India Assurance Co. Ltd Vs. M/s New Padma Enterprises and others, first appeal no. 45 of 2015 decided on 06.02.2019 (NC)

(ii) National Insurance Co. Ltd. Vs. Pradeep Dharmik, Civil Appeal no. 290 of 2014 decided on 03.10.2016 (NC)

9. Further, it was argued that as per the surveyor's report, the insured premises was being used for non-residential purpose and it fell under the exclusion clause of Home Loan Suraksha Policy, therefore, the claim is not tenable and the insurance company has rightly repudiated the claim vide letter dated 24.05.2018. Further, it was argued that the 'Home Loan Suraksha Bima Policy' was obtained by the bankers and hence it was duty of the bankers to inform the complainant about this and the insurance company is not liable if the policy document was retained by the bankers.

10. Further, the complainant took a plea that he had disclosed to the bank about the rental value of the property when the proposal was submitted for loan. However, the insurance company is not at all bound by the sanction note as the same is purely between complainant and the bank.

11. Learned counsel for the bank argued that the complainant sought a housing loan in respect of a residential property and the rate of interest for which is significantly lower vis-à-vis the rate of interest qua loans for commercial properties/purpose, hence, it is causing financial loss to the bank. The sanction letter dated 04.01.2010 issued by the bank was with respect to a home loan, and the conditions including the condition that the property would only be used for residential purpose was unequivocally accepted by the complainant and his mother. It is pertinent to mention that the conditions of the sanction letter were manifestly

breached by the complainant, therefore, the complainant cannot take advantage of his own wrong.

12. Further, he argued that it was categorically pointed out by the bank vide letter dated 02.07.2018 that as the bank had learnt subsequently that tenant (M/s Gem Hotel Product) of the complainant had availed insurance coverage with respect to the stocks stored by it in the property in question since 2010 and as such, the insurance company ought to have noted that the home loan insurance policy in question was in contradiction to the earlier insurance policy with respect to stocks. He further argued that no information with respect to the commercial use of the property was ever conveyed to the bank. Even otherwise, in terms of section 229 of the Indian Contract Act, the bank being the agent of the insurance company is not liable and the liability would be, if any, of the principal, viz., the insurance company.

13. The question which falls for our consideration is whether there is deficiency in service on the part of the insurance company.

14. It is seen from the perusal of evidences on record that the 'Home loan Suraksha Policy' was taken by the complainant at the instance of the bank, acted as agent in taking the insurance policy and as per Section 229 of Indian Contract Act, 1872, it is well settled proposition that any communication to the agent of the insurance company, no doubt, bind them also.

15. Further, it is seen from the perusal of documents on record that that the loan for the house in question was taken for residential purpose only. The letter of Bank of India dated 04.01.2010, having reference number: KSB/PKG which is in the form of sanction letter, under the heading '(viii) Other Conditions' contain the condition g), which is as under:

g) The star Home Loan is sanctioned only for residential purpose and/or shop/office come residence purpose. Any commercial use by any other person will attract commercial rate of interest.

Again the condition J) contains the following:

"j) construction of the house must be completed within 3 years of first disbursement of loan, otherwise entire loan will be treated as commercial loan since beginning interest will also be recovered accordingly."

These two conditions in the sanction letter of the loan unequivocally conveys that the loan has been sanctioned to use the house as a residential or at the most personal office purpose and it should not be used for commercial purpose to any third party otherwise the rate of interest shall be fixed for commercial loans. On the analysis of loan documents, it clearly appears that the complainant never mentioned that the house in question on which the loan has been taken shall be used for commercial purpose. On the other hand, the complainant had taken the Home Loan at the rate of interest, which was meant for building or premises used for residential purpose and not for non-commercial purpose.

16. Further, it is pertinent to note that the sanction letter dated 04.01.2010 issued by the bank was with respect to a home loan, and the conditions including the condition that the property would only be used for residential purpose was unequivocally accepted by the

complainant and his mother. It is pertinent to mention that the conditions of the sanction letter were manifestly breached by the complainant. Therefore, the complainant cannot take advantage of his own wrong. The terms and conditions of the policy are sacrosanct and have been reiterated by the Hon’ble Supreme Court in **Suraj Mal Ram Niwas Oil Mills Pvt. Ltd. v. United India Insurance Co. Ltd., (2010) 10 SCC 567**, decided on 08.10.2010. The relevant portion is reproduced hereunder:

“26. Thus, it needs little emphasis that in construing the terms of a contract of insurance, the words used therein must be given paramount importance, and it is not open for the court to add, delete or substitute any words. It is also well settled that since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the policy, its terms have to be strictly construed to determine the extent of liability of the insurer. Therefore, the endeavor of the court should always be to interpret the words in which the contract is expressed by the parties.”

The Hon’ble Supreme Court reiterated the requirements of strict interpretation of the Insurance Clauses in the case of **Canara Bank v. United India Insurance Co. Ltd. (2020) 3 SCC 455**, decided on 06.02.2020, the relevant portion is reproduced hereunder:

“21. The principles relating to interpretation of insurance policies are well settled and not in dispute. At the same time, the provisions of the policy must be read and interpreted in such a manner so as to give effect to the reasonable expectations of all the parties including the insured and the beneficiaries. It is also well settled that coverage provisions should be interpreted broadly and if there is any ambiguity, the same should be resolved in favour of the insured. On the other hand, the exclusion clauses must be read narrowly. The policy and its components must be read as a whole and given a meaning which furthers the expectations of the parties and also the business realities. According to us, the entire policy should be understood and examined in such a manner and when that is done, the interpretation becomes a commercially sensible interpretation...”

17. . In view of the above discussion, we are of the view that the complainant had breached the terms and conditions of the policy by using the subject house for commercial purpose by renting it to M/s Gem Hotel Products, without informing the insurance company. Therefore, the insurance company has rightly repudiated the claim as per policy and the insurance company is not deficient in their service.

18. In view of the above, the order dated 07.10.2022 of the State Commission is upheld and the appeal is dismissed. Pending applications, if any, stand disposed of.

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SUBHASH CHANDRA
PRESIDING MEMBER
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DR. SADHNA SHANKER
MEMBER