

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**CONSUMER CASE NO. 139 OF 2023**

1. VARUN AHUJA & ORS .....Complainant(s)  
DW-40 NIRVANA COUNTRY, SECTOR-50 GURGAON  
GURUGRAM  
HARYANA
2. SAMEER SUNEJA  
C-5/20, SECOND FLOOR, SAFDARJUNG DEVELOPMENT  
AREA, NEW DELHI-110016  
SOUTH  
DELHI
3. AMARJIT SINGH  
C116 DEFENCE COLONY, NEW DELHI-110024  
SOUTH  
DELHI
4. LATE MRS. SUVENI SAPRA SINGH  
C116 DEFENCE COLONY, NEW DELHI-110024  
SOUTH  
DELHI
5. INAYAT SINGH  
C116 DEFENCE COLONY, NEW DELHI-110024  
SOUTH  
DELHI
6. ARMAN SINGH  
C116 DEFENCE COLONY, NEW DELHI-110024  
SOUTH  
DELHI
7. ANTARA SINGH  
C116 DEFENCE COLONY, NEW DELHI-110024  
SOUTH  
DELHI
8. NARINDER KUMAR MEHTA  
G-307, WEMBLEY ESTATE ROSEWOOD CITY, SECTOR-  
50, GURGAON  
GURUGRAM  
HARYANA
9. NEERAJ BHAGAT  
B-2/2032, VASANT KUNJ, NEW DELHI  
SOUTH  
DELHI
10. VANDANA BHAGAT  
B-2/2032, VASANT KUNJ, NEW DELHI  
SOUTH  
DELHI
11. NITIN AHUJA

F-171,SECOND FLOOR, SUSHANT LOK-II  
 GURUGRAM  
 HARYANA  
 12. ISHA AGGARWAL  
 F-171,SECOND FLOOR, SUSHANT LOK-II,  
 GURUGRAM  
 HARYANA

Versus

1. M3M INDIA PRIVATE LIMITED  
 41ST FLOOR, TOWER-1, M3M INTERNATIONAL  
 FINANCIAL CENTER, SECTOR-66 BADSHAHPUR  
 GURGAON

GURUGRAM

HARYANA

2. MARTIAL BUILDCON PRIVATE LIMITED

F-022, LG, SUSHANT ARCADE, SUSHANT LOK - 1, GURU  
 GRAM

GURUGRAM

HARYANA

3. M-WORTH SERVICES PRIVATE LIMITED

SHOP NO. 163, UPPER GROUND FLOOR, C-BLOCK,  
 SUSHANT VYAPAR KENDRA, SUSHANT LOK-PHASE-I  
 GURGAON-122002

GURUGRAM

HARYANA

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. JUSTICE A. P. SAHI,PRESIDENT  
 HON'BLE DR. INDER JIT SINGH,MEMBER**

FOR THE COMPLAINANT : MR. ADITYA PAROLIA, ADVOCATE  
 MS. SUMBUL ISMAIL, ADVOCATE  
 MR. PRANJAL MISHRA, ADVOCATE  
 MS. ANVITA PRIYADARSHI, ADVOCATE

FOR THE OPP. PARTY : MR. JATIN SEHGAL, ADVOCATE  
 MR. ADHIRATH SINGH, ADVOCATE  
 MS. RAYMON SINGH, ADVOCATE  
 MR. ADITYA VARUN, ADVOCATE  
 MR. ABHAY JADAUN, ADVOCATE  
 MS. MOLLY SHARMA, ADVOCATE

**Dated : 23 September 2024**

**ORDER**

**A. P. SAHI, J (PRESIDENT)**

**IA/3361&3362/2024**

1. This IA/3362/2024 has been moved by the Opposite Party seeking dismissal of the Complainant on the ground that the Complainants are not consumers, and the complaint is time barred and therefore the complaint deserves to be dismissed. However, the main thrust of the argument is that the Complainants have purchased their respective multiple commercial units which are exclusively for commercial purposes without any element of self-employment or for earning their livelihood or occupation. The acquisitions are pure investments for profit generation. In fact all the Complainants have leased out their respective units and are enjoying rental income and therefore the details, the evidence of the lease deeds and other relevant documents demonstrate that the units have been purchased solely for commercial purpose and consequently all the Complainants do not qualify as consumers within the provisions of the Consumer Protection Act, 2019. Learned Counsel urged that keeping in view the provisions of Section 2(6) and 2(7) read with Section 2(42), the purpose of the purchase of the units is clearly commercial with no element of exclusively earning livelihood through self-employment. Hence in view of the judgments referred to hereinafter, the facts as brought on record together with the additional affidavit filed in two volumes on 08.07.2024 through IA/14037/2024 clearly substantiate the allegations made in this application and hence the complaints deserve to be dismissed.
2. It may be mentioned that IA/3361/2024 has also been filed by the Opposite Party praying that the Complainants be called upon to file all such documents of all the lease deeds executed by all the 12 Complainants in respect of the commercial units which according to the Opposite Party has been intentionally concealed. The prayer is that the said documents would demonstrate that all the Complainants are speculative investors who have purchased the goods and availed the services from the Opposite Party No.1 for commercial purpose. This has been clearly stated in paragraph 2 of the said application.
3. Learned Counsel for the Opposite Party while pressing the arguments as well as the written submission filed on 22.08.2024 has relied on the following judgments to substantiate his submissions.

*“1. Gurupyara Bhatnagar Vs. M/s Mvl Credit Holding and Leasing Ltd & Ors. CC No.186 of 2022.*

*2. Aradhna Dayal V. Emaar Mgf Land Limited. CC No. 1181 Of 2015*

*3. Sujeet Jain V. DB Realty Limited & Ors. 2022 SCC OnLine NCDRC 353*

*4. M/S. Grand Venezia Buyers Association V. M/S. Grand Venezia Commercial Towers Pvt. Ltd. 2017 SCC OnLine NCDRC 1644*

*5. Balbir Singh Randhawa V. Dlf Universal Limited & Anr. 2016 SCC OnLine NCDRC 1158*

*6. Ashok Thapar V. Supreme Indosaigon Associates & Anr. CC NO. 31 OF 2008*

*7. Cheema Engineering Services V. Rajan Singh (1997) 1 SCC 131*

*8. Laxmi Engineering Work V. P.S.G. Industrial Institute MANU/SC/0271/1995*

*9. Synco Texttiles Pvt. Ltd. V. Greaves Cotton And Pvt. Ltd. 1990 SCC OnLine NCDRC 3*

10. *Akhilesh Kumar Naithani & Anr. V. M3M India Private Limited. 2021 SCC OnLine NCDRC 728*”

4. It is submitted that the Complainants have filed their reply and according to the arguments advanced by them, the contention raised on behalf of the Opposite Parties are unfounded and cannot stand the test of scrutiny laid down by the Apex Court in several judgments.
5. He has then invited the attention of the Bench to the agreements on the record of the complaint as also the documents that have been filed in two volumes as an additional affidavit through IA/14037/2024. While advancing his submissions learned Counsel for the Opposite Party has referred to the chart at internal page 3 of IA/3362/2024 which is extracted hereinunder:

C.NO	Name	Units	Brand Leased Out
1&2	Varun Ahuja	SB/R/GL/09/001	FLY: First Love Yourself Lounge & Bar
	And	SB/R/GL/01/011	Axis Bank Ltd.
	Sameer Suneja	SB/R/GL/01/010	Axis Bank Ltd.
3 to 7	Amarjit Singh, Late Mrs. Suveni Sapra Singh, Inayat Singh, Arman Singh and Antara Singh	SB/R/GL/03/004	Pizza hut
8	Amarjit Singh, Late Mrs. Suveni Sapra Singh, Inayat Singh, Arman Singh and Antara Singh	SB/R/GL/03/004	Mr. Debarshi- Wrap Caffe/Dakshini  Zaika Lajawaab South India Café
9&10	Neeraj Bhagat AND Vandana Bhagat	SB/R/GL/09/02	FLY: First Love Yourself Lounge & Bar
11&12	Nitin Ahuja AND Isha Aggarwal	SB/R/1L/04/018	Palette by Km/Kritika Madan Label

6. It is urged that in respect of the Complainant No. 1 & 2 Mr. Varun Ahuja and Mr. Sameer Suneja, it is evident from the documents brought on record that Mr. Sameer Suneja is a non-Indian Resident and is the Chief Executive Officer of a group which he

heads, and is therefore not a person who has purchased a unit for any self-employment or livelihood. To the contrary, the purchase is purely for a commercial purpose and in order to display the profile of Mr. Suneja, Annexure A7 at page 209 of the compilation of additional affidavits has been referred to.

7. So far as the Complainant No.1 Mr. Varun Ahuja is concerned, his profile has been reflected through Annexure 1 and Annexure 2 at page 11 and 13 of the additional affidavit to urge that he is running a company in the name of Comp Mart India Pvt. Ltd. of which he and his wife Mrs. Tanu Ahuja are directors as is evident from the details on record. He is also registered as a real estate agent under the provisions of Haryana RERA and copy of the said certificate dated 21.11.2017 has been also filed on record. It is then pointed out through Annexure 3 which is an application form of a commercial unit negotiated through him where he is recorded as a channel partner for M/s M3M, the developer herein.
8. To substantiate that he has negotiated the property as a channel partner, particulars of the application moved by Mr. Neeraj Bhagat and his wife Mrs. Vandana Bhagat, who have invested in the properties, have also been read out. It is also pointed out by the learned Counsel that Mr. Neeraj Bhagat is running his own turn key Industrial Contract institution known as Survi Projects Pvt. Ltd. and his wife Mrs. Vandana Bhagat is running a business of garment exports in the name and style of Cactus Fashions.
9. The submission is that they are investors who have purchased 3 units and they have leased it out to different entities on rent namely FLY and Axis Bank Ltd. The lease agreements thereof are there on record. It is further submitted that apart from these three units there is a fourth unit which has been acquired by them and has not been disclosed which has come to the notice of the Opposite Parties with regard to which the documents have been filed.
10. He then points out the details of the Complainants No. 3 to 7 and has invited the attention of the Bench to the lease deed dated 15.11.2018 at page 52 of this application as also the receipts regarding the realization at page 117. It is then urged that apart from the unit referred to in the chart quoted above another unit has been purchased by these investors for which he has invited the attention of the Bench to Annexure 8 of the additional affidavit at page 211 indicating the details of an additional property. Amarjit Singh the Complainant No.3 is in the garments trade and the properties referred to in the chart above are either booked in his name or his family members. There is a cancellation notice also but that appears to be in respect of a different property.
11. Learned Counsel then invited the attention of the Bench to the details of Complainant No.8 Narender Kumar Mehta who is a financial consultant who has booked a unit and in addition thereto the additional units booked by him are reflected in Annexure 10 at page 215 the details whereof are available at page 293, at page 357 and again at page 375. The contention is that all these units are in addition to the unit mentioned in the chart indicated above.
12. Coming to the Complainant No.9 & 10, learned Counsel has invited the attention of the Bench to page 18 & 20 which are the properties that have been negotiated by them through the Complainant No. 1. It has been further pointed out that Mr. Neeraj Bhagat is the director of Survi Projects which is evident from Annexure A 16 and that his wife is running a Garment business in the name and style of Cactus Fashions as is reflected from Annexure A17 at page 409.

13. Regarding the Complainant No.11 & 12, learned Counsel urged that there is only one unit as they have been able to trace up till now. Nonetheless, the same has also been purchased for commercial purpose and has been leased out to the entity referred to in the chart referred to and extracted hereinabove.
14. With the aid of these facts, learned Counsel has urged that in the background of the said facts and the judgments relied on by the learned Counsel which he has read extensively during the course of the arguments, the Complainants do not qualify as consumers and consequently, the complaints deserve to be dismissed. He has also raised an argument contending that all the documents on record unequivocally indicate that the conveyance is of the sale of the premises to the Complainants and that such sale would amount to transfer which are essentially not services inasmuch as the entire structure is a mall wherein the Complainants have purchased property as an investment, hence they are not consumers.
15. Responding to the said arguments, learned Counsel for the Complainant, Mr. Parolia, has advanced his submissions on the strength of the reply filed by him on 26.04.2024 and other documents coupled with the judgments cited by him, some of which have been appended along with the said reply and have again been made part of the compilation along with some more judgments that have been tendered during the course of the arguments. The 19 judgments cited by him are as follows:

- “1. Laxmi Engg. Works P.S.G. Industrial Institute, (1995) 2 SCC 583; decided on 04.04.1995
2. Sunial Kohli and Another v. Purearth Infrastructure Ltd. 2019 SCC OnLine SC 1506; decided on 01.10.2019
3. Madan Kumar Singh v. District Magistrate, Sultanpur and Others (2009) 9 SCC 79; decided on 07.08.2009
4. paramount Digital Colour Lab & Ors. Vs. Agfa India Pvt. Ltd. & ors. (2018) 14 SCC 81; decided on 15.02.2018
5. Kushal K. Rana v. DLF Commercial Complexes Ltd. 2014 SCC OnLine NCDRC 564; decided on 09.09.2014
6. Shivani Thakran v. Ireo Pvt. Ltd. CC/617/2020 decided on 19.10.2022
7. Ireo Pvt. Ltd v. Shivani Thakran Civil Appeal No. 4590/2023 decided on 29.01.2024

8. Monika Bansal and anr. v. Total Environment Building Systems Pvt. Ltd. CC/1827/2019 decided on 27.03.2024
9. Total Environment Building Systems Pvt. Ltd. v. Monika Bansal And Anr. Civil Appeal No. 6102 OF 2024, decided on 12.07.2024
10. Santosh Johari v. Unitech Ltd. CC/429/2014 decided on 08.06.2015
11. Rohit Chaudhary and Another v. Vipul Ltd. (2023) SCC Online SC 1131
12. Shri ram Chits (India) Private Limited Earlier Known As Shriram Chits (K) Pvt. Ltd. V. Raghachand Associates, SLP (C) No. 15290 of 2021 on 10.05.2024
13. Lilavati Kirtilal Mehta Medical Trust V. Unique Shanti Developers, Civil Appeal No. 12322 of 2016; decided on 14.11.2019
14. Raj Dadarkar and Associates Vs ACIT, CC-46, (2017) 14 SCC 476, 0n 09.05.2017
15. Bunga Daniel Babu Vs Sri Vasudeva Constructions and Ors (2016) 8 SCC 429, on 22.07.2016
16. Sanjay Rastogi v. M/s BPTP Limited and Anr., CC/3580/2017 on 18.06.2020
17. M/S BPTP Limited And Anr V. Sanjay Rastogi C.A. 1001-1002 OF 2021, on 12.04.2021
18. National Insurance Co. Ltd. vs Harsolia Motors and Ors. Online SC 409, on 13.04.2023
19. Alpha G184 Owners Association v. Magnum International Trading Company Pvt. Ltd. [2023 SCC OnLine SC 625, on 15.05.2023”

16. Mr. Parolia states that the Complainants are consumers, inasmuch as, firstly that the nature of the transaction in respect of the units allotted and purchased by the complainants are housing constructions which fall within the definition of the word "Service" under Section 2(42) of the Consumer Protection Act 2019. He submits that the argument of the Opposite Party that they are a transfer of a property cannot bring the transaction within the definition of "Goods" as defined under Section 2(21) of the Act as goods are exclusively defined as movable property. He submits that once housing constructions are not goods, and are services, the deficiency whereof has been pleaded in the complaints, then the issue of acquisition of the property exclusively for earning livelihood through self-employment is nowhere required to be taken into account as explanation (a) to Section 2(7) does not apply in the case of services and is only applicable to goods as defined under Section 2(21). He contends that since the transactions in question are immovable property they can by no stretch of imagination be treated as goods under Section 2(21) of the Act and hence the expression "exclusively for the purpose of earning livelihood by means of self-employment" used in explanation (a) of Section 2 (7) will not apply at all to such transactions which are services under Section 2(42) of the Act. He submits that this argument and position of law, which in his opinion is correct, has neither been considered, raised or decided by any of the Courts or this Commission in the cases that have been cited by the learned Counsel for the Opposite Party. The question of applying the explanation for services therefore being inapplicable, the entire edifice of the argument of the Opposite Parties falls through.
17. He then submits that to treat rental income exclusively as a commercial purpose activity is incorrect. He submits that rental income is not profit and is not governed by the principles of commercial contracts as profits are always correlated with losses. Therefore the rental income per se is not a commercial purpose venture.
18. He further submits that purchase of number of units does not matter at all nor is the status of one of the Complainants who is a non-resident Indian, material. The dominant purpose and the only purpose which has to be looked into in the present case is from the point of view that the Complainants have only sought services regarding the constructions. This therefore is the only purpose which in no way is a profit generating purpose by itself.
19. The contention is, that to what use the property is put to subsequently, is of no material relevance as any consequential future act of the Complainant to utilize the property is not part of the services rendered by the Opposite Party. He then contends that this is not a manufacturing or an investment on a large scale so as to bring into within the fall of commercial purpose as understood in the light of the decisions that have been cited by him. The immediate and the only purpose is to acquire the property from the Opposite Party who as a developer is obliged to handover the property and in the event there are deficiencies the same can be complained of before the Consumer Forum. The Complainants have raised issues of deficiency in respect of this purpose which is limited in respect of the acquisition of the property, and not to what use the property is put to subsequently by the Complainants. This transaction therefore is confined to the services rendered by the Opposite Party in just providing the units to the Complainants the deficiency whereof has been complained of in the present proceedings.



20. Mr. Parolia has also extensively read all the judgments but in particular he has relied on the Apex Court Judgment in the case of *Shriram Chits (K) Pvt. Ltd. (Supra)* to contend that the tests which have been laid down therein to gather as to whether the activity is a commercial purpose or not if applied on the facts of this case would demonstrate that the acquisition is not for commercial purpose. As a corollary to the said arguments, he submits that the Opposite Parties have not discharged this burden at all to prove that the services rendered by them in any way amount to a commercial purpose. It is also urged that multiple numbers of purchase do not matter and for that he has relied on the judgement in the case of *National Insurance Co. Ltd. Vs. Harsolia Motors (Supra)*. He has also urged that the judgment in the case of *Lilavati Kirtilal Mehta Medical Trust V. Unique Shanti Developers (Supra)* also comes to his aid. To substantiate, he has relied on the other judgments cited by him as well.
21. He then contends that rental income cannot be construed to be a criteria to treat it as a commercial venture for any commercial purpose or for business purposes and reliance is placed on the Apex Court judgment in the case of *Raj Dadarkar and Associates (supra)*. He then submits that the argument of rental income being a commercial activity as raised by the Opposite Party, has been rejected, and he relies on the order passed by this Commission in the case of *Shivani Thakran Vs. IREO Pvt. Ltd. (Supra)* that has been affirmed by the Apex Court the order whereof has been placed on record. He has then cited the judgment in the case of *Rohit Chaudhary and Another v. Vipul Ltd. (Supra)* to advance his submissions on the grounds taken by him and he therefore urges that in view of the aforesaid arguments raised the Opposite Party raising the issue that the Complainants are not consumers is misconceived and deserves rejection.
22. Learned Counsel for the Opposite Party in rejoinder submits that there is no pleading in respect of the argument advanced by the Complainants Counsel regarding the transaction being exclusively services.. He has also referred to Section 2 (d) and (e) of the Haryana RERA Apartment Act to contend that the words allottee and apartment have been defined therein and in view of the nature of the agreements and the law applicable, the regulating laws would have to be construed harmoniously along with the Consumer Protection Act to hold that persons acquiring multiple properties for commercial purpose like the Complainants herein do not qualify as consumers.
23. He submits that in case the arguments of the Complainants are accepted more particularly on the facts of the present case, the entire law on the subject may require a reconsideration for which the present matters may have to be referred to a larger Bench for resolving the controversy.
24. He then submits that the Complainants themselves have negotiated the leases through the developer and therefore the commercial purpose arising out of the services rendered by the Opposite Party is clearly established. He submits that if the transactions are services, then too on facts of the present case the commercial purpose of the purchase of the property leaves no room for doubt that the Complainants are pure investors and they have leased out their properties for gaining rental income as profits, hence the consumer forum is not available to them.
25. In order to appreciate the controversy and the arguments the provisions of Section 2(6) and Section 2(7) need to be extracted and is reproduced hereinunder:

**“(6) "complaint" means any allegation in writing, made by a complainant for obtaining any relief provided by or under this Act, that—**

*(i) an unfair contract or unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;*

*(ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;*

***(iii) the services hired or availed of or agreed to be hired or availed of by him suffer from any deficiency;***

*(iv) a trader or a service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price—*

*(a) fixed by or under any law for the time being in force; or*

*(b) displayed on the goods or any package containing such goods; or*

*(c) displayed on the price list exhibited by him by or under any law for the time being in force; or*

*(d) agreed between the parties;*

*(v) the goods, which are hazardous to life and safety when used, are being offered for sale to the public—*

*(a) in contravention of standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;*

*(b) where the trader knows that the goods so offered are unsafe to the public;*

*(vi) the services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by a person who provides any service and who knows it to be injurious to life and safety;*

*(vii) a claim for product liability action lies against the product manufacturer, product seller or product service provider, as the case may be;*

*2(7) "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 service 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 service 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, but does not include a person who avails of such service for any commercial purpose*

*Explanation. —For the purposes of this clause, —*

*(a) the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;*

*(b) the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing; ”*

26. The provisions of Section 2(21) are also extracted hereinunder along with the provisions of Section 2(42).

*“2(21) "goods" means every kind of movable property and includes "food" as defined in clause (j) of sub-section (1) of section 3 of the Food Safety and Standards Act, 2006 (34 of 2006)*

*2(42) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, **housing construction**, entertainment, amusement or the purveying of news or other information, **but does not include the rendering of any service free of charge or under a contract of personal service;**”*

27. The aforesaid definitions as interpreted from time to time therefore have to be read in the light of the decisions that have been cited at the bar.

28. This is a case that arises out of a dispute which is covered and governed by the provisions of the Consumer Protection Act, 2019. However, a reference in the context in which the arguments have been advanced in the present case need to be appreciated in the background of the provisions of the Consumer Protection Act, 1986. The definition of the word “goods” under Section 2(1)(d) (i), reads as follows:

*2(1)(d) (i) “goods” means goods as defined in the Sale of Goods Act, 1930 (3 of 1930)”*

29. The Sale of Goods Act defines “goods” under Section 2 (7) as follows:

2(7) “goods” means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.”

30. A change is witnessed in the definition of the word “goods” under Section 2 (21) of 2019 Act, which has already been extracted herein above. The change is specific as against the 1986 Act in as-much- as under the 2019 Act, ‘Goods’ means every kind of movable property and also includes foods as defined under the Food Safety and Standard Act, 2006. The definition of the word “food” as contained in Section 3(1) (j) which reads as follows:

3.(1)(j) “food” means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food, to the extent defined in clause (ZK) genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, 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.”*

31. Thus, ‘goods’ previously were as defined under the Sale of Goods Act, and as now under the new Act, means every kind of movable property as well as food. ‘Goods’ therefore, under the 2019 Act do not include immovable property.
32. It seems that the Legislature while defining ‘goods’ and ‘services’ was aware of other kind of transactions of immovable property, for example, a private person or anybody selling his house which is already an existing construction. When such a property which is immovable is sold, it is a transfer of property *per se* and therefore, does not seem to be contemplated as a business to consumer service. By simply purchasing an already existing immovable property without any element of service does not automatically become a business to consumer service unless it falls within the definition of the word ‘service’ as understood under Section 2 (42) in 2019 Act. The reason is, service means any activity of any description which is made available to potential users and includes, but not limited to the facilities referred to therein which specifically refers to “housing construction”. It further categorically states that service does not include the rendering of any service free of charge or under a contract of personal service.
33. Thus, a service of ‘housing construction’ made available to potential users would be a service within the definition aforesaid and if a builder or developer has floated a project offering units as housing constructions then the same would fall within the definition of ‘services’ and cannot be termed in any manner as ‘goods’ as defined under the Act.
34. In the instant case the grievance raised regarding deficiency is in respect of the certain units that were acquired by the complainants in the project in the name and style of ‘M3M Urbana’ at Sector 67, Gurgaon, Haryana that commenced in the year 2012. The

same was to consist of nine Blocks of retail and office space, restaurant space, double height retail units and other retail and serviced units, consisting of a number of floors as indicated in the complaint. This was therefore, a project where the units were offered, the prices whereof ranged between Rs.57 lacs and odd to Rs.1.94 crores and odd. The units were exclusively for commercial purposes in the sense that they were office spaces, retail shops and service apartments.

35. There is a dispute raised about the construction of a new Block on a part of the land which was meant for a parking area, and the construction of the alleged new Towers has been complained of as infringing upon the common area meant for the complainants. It is alleged that the same is being done without their consent and is in violation of the laws that have been pleaded in the complaint.
36. It is alleged that this will also add on to the burden of the facilities and amenities that were meant only for the Blocks offered to the complainants and additional number of units if allowed to come up will proportionately be a burden on the common areas and the other facilities. Maintenance issues and charges relating to external development and infrastructural development, structural defects, leasing out common areas and other deficiencies have been alleged in the consumer complaint. It is also alleged that the habitation conditions also indicate defects which have not yet been removed including seepage etc. and none of the issues raised have been resolved by the opposite parties.
37. The prayer made in the complaint is as follows:

*“a) Direct OP-1 to not construct the 10<sup>th</sup> Block in the said Project until consent is taken from all complainants / allottees of the Project, ‘M3M Urbana’,*

*b) Direct OP-1 to disclose the details of the total EDC/IDC collected by it from the allottees of the Project and deposited with the concerned authority;*

*c) Direct the OP-1 to refund the excess EDC/IDC charges collected from all complainants / allottees of the said project along with interest @ 18% p.a. from the date of such receipt, in the event the total EDC/IDC charges collected from all complainants / allottees is in excess of the EDC/IDC deposited by OP-1 with the concerned authority;*

*d) Direct OP-1 and OP-3 to disclose the audited accounts of maintenance and IFMS funds;*

*e) Direct OP-1 and OP-3 to jointly and severally transfer the entire IFMS funds collected from all complainants / allottees of the Project “M3M Urbana” without any deductions and along with interest @ 18% p.a. from the date of request for refund of the IFMS funds was made by the RWA, to the account of the RWA;*

*f) Direct the OP-1 to refund an amount to the tune of Rs. 6 Lakh to the complainants for arbitrarily constructing a new tower for which the complainants had borne a hefty amount for common-open area facilities;*

*g) Direct the Opposite Party (s) to hand over the entire maintenance to the RWA;*

*h) Direct the Opposite Party (s) to rectify the structural defects in the Unit(s) with immediate effect;*

*i) Direct the Opposite Party (s), jointly or severally, to pay compensation of INR 5,00,000/- (Rupees Five Lakhs Only) each to all similarly situated complainants / allottees of the Project "M3M Urbana" towards mental agony, harassment, discomfort and undue hardships caused to the complainants as a result of the above acts and omissions on the part of the Opposite Party (s);*

*j) Direct the Opposite Party, jointly or severally, to pay a sum of INR 1,00,000/- (Rupees One Lakh Only) each to all similarly situated complainants / allottees of the Project "M3M Urbana" towards litigation costs; and*

*k) Any other and further relief in favour of all similarly situated complainants / allottees in the Project "M3M Urbana" as the Hon'ble Commission may deem fit and proper in the fact and circumstances of the case."*

38. Consequently, the nature of the complaint is in respect of these units as described above and the deficiencies alleged in respect thereof.
39. The question is as to whether the nature of the transaction falls within the definition of 'services' and if so, then whether the complainants in the light of the objections raised on behalf of the opposite parties are 'consumers' within the definition of 2019 Act. This also calls for an analysis as to whether the properties acquired by the Complainants are a transaction covered as a commercial purpose or not.
40. The complainants have alleged that they have purchased these units for their own livelihood through self-employment. The opposite parties have filed objections contending that all the complainants are investors and neither have the units been purchased for livelihood nor are they ventures of self-employment. All the units have been leased out for earning profits through rental income and therefore such acquisition have been held by several decision of this Commission to be falling within the definition of commercial purpose and complaints have been dismissed. The opposite parties therefore have raised this objection contending that the complaints are not maintainable.
41. It is in response to this objection that the complainants' counsel has urged that the concept of self-employment and earning of livelihood is nowhere attracted for services rendered in as-much-as the entire activity of acquiring the units falls within the definition of the word 'services', and not 'goods'. The contention is that the concept of earning livelihood through self-employment as contained in the explanation of the definition of the word 'consumer' quoted hereinabove, applies exclusively and only for 'goods' and has been consciously and deliberately not applied by the Legislature to 'services'.
42. The contention therefore is that all the decisions that have been cited by the learned counsel for the opposite parties to support his contention do not apply in respect of services to which the explanation does not apply at all. It is urged that a reading of the judgment in the case of *Shriram Chits (supra)* and then the judgment of the Apex Court in the case of *Lilavati Kirtilal Mehta Medical Trust (supra)* is essential. Mr. Parolia, learned counsel for the complainants submits that in the case of *Lilavati Kirtilal Mehta (supra)*, the Apex Court proceeded to treat goods and services as being covered under

the 1986 Act where the interpretation given was as per the then existing provisions applicable on the facts of that case. In order to appreciate the distinction he has invited the attention of the Bench to Paragraph-14 of the judgment of the Apex Court in the case of *Shriram Chits (supra)* which is extracted herein under:

“14. The provision as it stands now (as extracted above) was not how it appeared when it was grafted in the original Act. The definition of 'consumer' has undergone textual amendments in 1993 and in 2002. For ease of reference, the evolutionary history of the provision from its origin until the 2019 Act is captured in the table below:

<b>Consumer Protection Act, 1986</b>	<b>The Consumer Protection (Amendment) Act, 1993</b>	<b>The Consumer Protection (amendment) Act, 2002</b>	<b>Consumer Protection Act, 2019</b>
<p>“Consumer” means any person who, -</p> <p>(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 good 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</p> <p>(ii) hires 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 the services for consideration paid</p>	<p>“consumer”, means any person who, -</p> <p>(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</p> <p>(ii) <b>Hires or avails of</b> 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 <b>hires or avails of</b> the services for consideration paid</p>	<p>“consumer” means any person who, -</p> <p>(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</p> <p>(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</p>	<p>(7) ‘consumer’ means any person who –</p> <p>(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</p> <p>(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</p>

<p>paid and partly promised, or under any system of deferred payment, when such services are availed with the approval of the first mentioned person</p>	<p>or promised, or partly paid and partly promised, or under any system of deferred payment when such services are availed with the approval of the first mentioned person.</p> <p><b>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</b></p>	<p>or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed or with the approval of the first mentioned person, <b>but does not include a person who avails of such services for any commercial purpose.</b></p> <p><b>Explanation – For the purposes of this clause, ‘commercial purpose’ does not include use by a person of goods bought and used by him exclusively for the purposes of earning his livelihood by means of self-employment.</b></p>	<p>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, <b>but does not include a person who avails of such service for any commercial purpose.</b></p> <p><b>Explanation – For the purpose of this clause,</b></p> <p>(a) the expression ‘commercial purpose’ does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;</p> <p>(b) the expressions ‘buys any goods’ and ‘hires or avails any services’ includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;</p>
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43. He has then read out paragraph-15 to 22 of the same judgment to urge that firstly livelihood by means of self-employment does not apply to service but even otherwise also, the obtaining of the service of a purchase of a unit does not by itself *per se* become a commercial transaction. The purpose is only to purchase the unit, and the seller thereafter is nowhere concerned with the consequences to which the property is put to use after its purchase. It is urged that the unit purchased by the complainants by itself is not a commercial transaction. The subsequent use to which the property is put cannot be a reason to assess the purpose for the acquisition of the property. In short, he submits that the transaction terminates with the purchase of the property and any subsequent usage of that property by the complainant is not a part of the service rendered by the service provider. There is therefore, no profit generation attached as the transaction terminates with the purchase of the property.



44. He therefore, submits that there is no commercial purpose involved so as to non-suit the complainants as 'consumers' and exclude them from the benefits of the 2019 Act.
45. The contention of the learned Counsel for the Complainants is that the word 'commercial purpose' has been dealt with in several cases and he has tendered a brief submission filed on 19.08.2024 which is extracted herein under:

**1. Questions to be determined:**

*It is most humbly submitted that the primary questions before this Hon'ble Commission to evaluate are as follows:*

- a) *Whether the services availed by a homebuyer/allottee from a builder fall under the definition of "service" as prescribed under the Consumer Protection Act, 2019 ("Act") and can such services be availed for commercial purpose, when the primary service being availed by the allottee is only for construction of the particular unit?*
- b) *After availing the services of construction from the builder, will the subsequent use of the unit after taking possession and the nature of usage of the property provide immunity to the builder from the liabilities arising out of the defects and deficiencies in the unit.*

**2. Nature of service to be seen while determining commercial purpose and not the subsequent product borne out of the service:**

- a) *It is submitted that while determining the question of commercial purpose under the Act, this Hon'ble Commission has to determine the nature of the service i.e. whether the services availed are commercial in nature or not, not the product which is borne out of that service. Even if the product resulting from the such services is determined to be commercial, but that would not render the services itself to be commercial, and a remedy for the consumer under the act would lie before the consumer forum.*
- b) *Further, what can be culled out from the parameters laid by the Hon'ble Supreme Court is that the service in itself which is availed by any complainant is to be considered while deciding the question of "commercial purpose" as defined under the Act and not the subsequent usage of the product which is borne out from those services. Therefore, in the present case, the services of construction were hired by the Complainants from the Opposite Party for construction of their particular Unit.*
- c) *In case subsequent usage of a unit is being considered, even in that scenario, receiving rental income from the unit by the allottee, while being in another profession, will not qualify as "commercial purpose" under the Act. For instance, if an individual hires the services of an artist to create a painting, and later on sells the painting, that would not render the transaction commercial, as the services which were hired were solely and exclusively for painting and nothing else. Similarly, in the present case, only the services of construction were hired by the Complainants for construction of the Unit.*

d) This is also the reason why the concept of "livelihood" and "resale" have been removed vis-à-vis the determination of commercial purpose for "services" and the same has been restricted to "goods".

### **3. Dominant purpose to be seen as opposed to immediate purpose:**

Moreover, it is the dominant purpose which is to be evaluated by the court in light of the fact that the nature of transaction between the allottees and builder, which in the present case, is only the service of construction of the unit. Therefore, test propounded by the Hon'ble Supreme Court in *Lilavati Kirtilal Mehta Medical Trust v. M/s. Unique Shanti Developers & Ors.* (C.A./12322/2016) (Para 7) has to be taken into consideration whereby one has to see the "dominant purpose" for which the services were availed and not the "immediate purpose". In the present case, the Complainants had booked the Units for their own self use, while the self use may not be immediate but the ultimate and dominant purpose is to utilize the Units for their own self-use. The said test has been reiterated by the Hon'ble Supreme Court in *Madan Kumar Singh v. District Magistrate, Sultanpur and Others* [(2009) 9 SCC 79] (Para 16).

### **4. Onus on the Opposite Party to prove that purpose is commercial:**

a) It is submitted that the once the Complainants have clarified in their pleadings that they have not availed the services for commercial purpose, the onus is upon the Opposite Party to prove otherwise, and a negative burden cannot be placed upon the consumer. That in order to oust a particular allottee from the definition of "consumer" as given in the Act on the grounds of "commercial purpose" the Opposite Party has to show that their services of construction which were availed by the Complainants were for commercial purposes and has to cross the threshold laid down by the Hon'ble Supreme Court in *Shriram Chits (India) Private Limited Earlier Known As Shriram Chits (K) Pvt. Ltd. V. Raghachand Associates, SLP (C) No. 15290 of 2021* (Para 20), *Lilavati (supra)* (Para 7) and *National Insurance Co. Ltd. vs Harsolia Motors and Ors.* [Civil Appeal No(S).5352-5353 OF 2007] (Para 31-44), and the definition of "commercial purpose" has to be read and evaluated only on the parameters laid down in these judgments.

b) However, in the present case, the Opposite Party No.1 has failed to discharge the onus placed upon it in *Shriram Chits(supra)* (Para 20), that the services hired were for commercial purpose. Rather, the primary contention raised by the Opposite Party No. 1 is that what they have delivered is not services but goods. Hence, the objection taken by the Opposite Party No.1 is also linked to the product that is borne out of the services which were availed, and not to the service per se.

### **5. Rental income does not equate to commercial purpose:**

a) *It has been categorically clarified and held by this Hon'ble Commission that the mere fact that the Complainant was earning rental income for his livelihood does not in any manner render the transaction commercial nor does it take the Complainant out of the purview of the meaning of the term consumer under the Act. It is only a large scale profit generating activity which can be considered as "commercial", and earning income from rent is neither a commercial activity nor does it lead to large scale profit generation. Reliance is being placed upon Rohit Chaudhary and Anr. V. Vipul Ltd. [2023 SCC Online SC 1131] (Para 5, 11 and 13).*

b) *It is reiterated that income from rent is not a profit generating activity as profits are always linked to losses. Moreover, the Finance Act states that income from letting out a house or part of a house by the owner shall not be charged under 'profits and gains of business or profession' but will be taxable under 'income from house property' only.*

c) *Furthermore, this Hon'ble Commission in a plethora of decisions has clarified that "an intention to rent out or actual renting out also cannot be termed to be any commercial activity" and that "The rental income from such property would be income from house and not a business income as defined in the Income Tax Act, 1961.". Reliance is being placed on Shivani Thakran v. Ireo Pvt. Ltd. [CC/617/2020] (Para 15) affirmed by the Hon'ble Supreme Court in Ireo Pvt. Ltd v. Shivani Thakran (Civil Appeal No. 4590/2023). Monika Bansal and anr. v. Total Environment Building Systems Pvt. Ltd. [CC/1827/2019] (Para 6) affirmed by the Hon'ble Supreme Court in Total Environment Building Systems Pvt. Ltd. v. Monika Bansal and anr. (Civil Appeal No. 6102 of 2024) and Santosh Johari v. Unitech Lad [CC429/2014] (Para 15).*

### **6. OP has to show "Large scale profit generating activity" to prove commercial purpose:**

a) *The Hon'ble Supreme Court in Lilavati (supra), categorically states that "7...However, ordinarily, 'commercial purpose' is understood to include manufacturing/industrial activity or business-to-business transactions between commercial entities. The purchase of the good or service should have a close and direct nexus with a profit-generating activity."*

*b) In this regard, service of construction of a small Unit availed by an individual can never fall under the scope of "commercial purpose" as opposed to hiring the services of contractor to construct, say, an entire mall or shopping complex. In the present case, service of construction of a small Unit availed by an individual is neither a large scale manufacturing or industrial activity nor is it linked to a large scale profit generation activity.*

### **7. Scope of Consumer Protection Act:**

*Lastly, it is most humbly submitted that this Hon'ble Commission should interpret the enactment and judgments in a manner that is in furtherance of the above- mentioned scope and objective and sub-serves the interests of the consumers. The Consumer Protection Act is a social benefit oriented legislation and, therefore, the Court has to adopt a constructive liberal approach while construing the provisions of the Act and any technical approach in construing the provisions against the consumer would go against the very objective behind the enactment. Reliance is being placed on Harsolia Motors(supra) (Para 20-24) and Alpha G184 Owners Association v. Magnum International Trading Company Pvt. Ltd. [2023 SCC OnLine SC 625] (Para 15, 23).*

*8. Therefore, in light of the foregoing submissions, it is submitted that the present complaint is maintainable and the Complainants are squarely covered within the definition of "consumer" having availed the services of the Opposite Party No.1 for non-commercial purposes.*

46. Countering the said submissions, learned Counsel for the Opposite Party submits that the fact that this entire transaction is exclusively for commercial purpose at an extensive scale can be gathered from a perusal of the Buyer's Agreement followed by the Lease Agreements regarding the properties to which they have been put to use after taking possession. Referring to the Buyer's Agreement, which is almost common in respect of all the Complainants, it is urged that the allottee has entered into an agreement for the development of a "commercial complex" and acquisition of "commercial unit". For this reference, be had to Clause H, J and L of the Preamble of the Buyer's Agreement. The definition of the word Agreement is also a "Commercial Unit Buyer's Agreement", which is also defined earmarking the status of the unit in the agreement. The laws applicable have also been indicated therein to include all statutes and enactments as well as Orders or directions issued by Courts or Tribunals. The entire approach is of a commercial venture and consists of Commercial Units in a commercial complex. The permitted use of the premise under the Buyer's Agreement is provided for under Clause '22' thereof which prohibits the use of the commercial unit for any other purpose except for shops, commercial offices, retail establishments and the like. The provisions are

applicable to the occupiers, assignees or subsequent owners of the said units. Thus the entire purpose of the constructions in the entire project is exclusively commercial.

47. Learned counsel for the Opposite Parties, therefore, contends that if the nature and character of the constructions is purely commercial, and it cannot be put to any other use, other than what has been defined therein, then the nature of the project itself is sufficient to establish that it is commercial and for the purpose of investment.

48. This is further fortified by the Lease Agreements that have been entered into by the Opposite Party No. 1 in respect of these properties acquired by the Complainants, whereby they have been leased out on rentals. The facts, which have not been disclosed by the Complainants and have been placed on record along with I.A. No. 3362/2024, pertaining to the lease deeds of the properties, have been admitted by the Complainants in their reply to the said I.A. filed on 26.04.2024 through Diary No. 16038. While responding to the recital of the Lease Deeds in particular, it would be useful to extract paragraphs 9 to 12 of the said reply, which are as follows:-

*9. It is relevant to state the **grievances and objective of the present consumer complaint do not involve delay in delivery of the units but involve several issues that arose post handover of possession of the Units, including construction of a new block within the project premises without the consent of the allottees; issues of maintenance and IFMS fund; demands of EDC and IDC; structural defects and deficiencies in the project; and Common area spaces being leased out by the Opposite Party No.1 arbitrarily.***

*10. It is also pertinent to mention herein that the **Lease Deeds placed on record by the Opposite Party No.1 herein have in fact been entered between the Complainants and the Opposite Party No.1 itself, under an arrangement whereby the Complainants would earn lease rentals in order to earn their livelihood, and the same is evident from a perusal of the documents annexed by it at Pg 52 pertaining to Mr. Amarjit Singh and M3M India Pvt Ltd. and At Pg 75 pertaining to Devyani International and M3M India Pvt Ltd. Of the present application, which clearly shows that it is the Opposite Party No.1 itself that has entered into such transactions.***

*11. It is however submitted that the Complainants are before this Hon'ble Commission in view of the disputes and issues arising out of the Builder Buyer Agreements entered into between the Complainants and the Opposite Party No.1 and 2 which remains a contract for construction and the dispute is a purely a consumer dispute and the services promised therein which squarely falls within the definition of services under the Act. **That any transaction entered subsequently pertaining to any lease deed is not the subject matter of the present complaint and is a separate transaction altogether. The grievances of the complainants are arising out of the builder buyer agreements and other documents placed on record by the Complainants, and not out of any lease deeds that the Complainants may have entered into subsequently. That the relationship between the Complainants and the Opposite Party No.1 is of a service provider and consumer for the purpose of adjudication of the present complaint. It is again reiterated that earning of livelihood through rental income does not fall outside the ambit and purview of the Act and therefore the present complaint is squarely maintainable in the eyes of law.***

*12. It is submitted that without admitting thereto, even if the contentions of the Opposite Party No.1 are accepted, the present dispute does not involve any large scale commercial activity which is a necessary ingredient for the Complainants to be ousted from the purview of the Act. It is further submitted that while the term "livelihood" has not been defined under the Act, the term itself is **all inclusive and dynamic in nature and is ever changing with the prevalent socio economic situations.** Therefore, the same cannot be restricted to the meaning ascribed to it in the past but has to be construed liberally so as to subserve the interests of the consumers. It is reiterated that unless it is shown that the goods purchased or services availed were for a large scale commercial activity, it cannot be said to be for "commercial purpose".*

49. Learned counsel for the Opposite Party has categorically urged that the submission raised on behalf of the Opposite Parties raising objections have also been noticed in the Order dated 01.03.2024 and subsequently in the Order dated 02.05.2024 and accordingly, the Opposite Parties have discharged their burden by bringing on record substantial proof to establish that the transactions by the Complainants are exclusively for commercial purposes and most of them have entered into multiple such engagements as investment. The contention is that the argument advanced on behalf of the Complainant is deceptive and untenable.
50. Having considered these submissions, it needs to be clarified at the outset that this is a dispute raised not regarding any movables defined as goods under 2019 Act. The entire dispute raised is with regard to the allegation of deficiencies as discussed above regarding constructions of commercial units in a commercial complex. Thus, the dispute hovers around deficiency in services of housing constructions as alleged by the Complainants and not a deficiency for any goods purchased.
51. As a consequence of the aforesaid conclusion, it is evident that the statutory position as explained in the Chart drawn up in the case of Shriram Chits (supra), there is no doubt that there has been a shift in the expressions used by the Legislature in respect of goods as against services from the previous definitions contained under the Consumer Protection Amendment Act, 2002 and the Consumer Protection Act, 2019. The distinction which has to be noticed, and which has been argued by Mr. Parolia, learned counsel for the Complainants, is that the explanation appended to the definition of the word 'Consumer' under the Amendment Act, 2002 included goods and services both for applying the principles of exclusion of the usage of service by a Consumer for the purpose of earning his livelihood by means of self-employment. Thus, the explanation then existing excluded activities for the purpose of livelihood by self-employment that was in respect of goods and services.
52. Under the 2019 Act, the explanation of "Exclusion" for the purpose of earning livelihood by self-employment stood confined only to goods and consequently the explanation under the 2019 Act regarding exclusion does not apply to services. The aforesaid legal position, therefore, leads to the conclusion that this shift in the intention of the Legislature is explicit and the expression commercial purpose in respect of

services would no longer have an exception in respect of usage for the purpose of earning livelihood by means of self-employment. The phrase “for the purpose of earning livelihood by means of self-employment” is no longer attracted for services.

53. If the aforesaid position stands clarified, then on the facts of the present case, this is a transaction relating to services and not of goods, The argument regarding declaration by the Complainants that their acquiring the property is exclusively for earning their livelihood or by means of self-employment does not arise and not relevant.
54. The only dispute, therefore, on the facts of the present case will have to be examined on the platform as to whether the services availed of are for any commercial purpose or not. Consequently, the inquiry to be made on the submissions made is as to whether the transactions involved in the present case are for commercial purpose or not.
55. The contentions raised center around the word “commercial purpose”. A transaction is commercial where there is an element of investment and is negotiated to yield profits. As to what is purpose, the ordinary meaning of it is an aim for an object or an intention for some desired outcome. It is nothing accidental and is planned. The manner of such planning is with an end or aim directed towards one’s view. In other words, a purpose is that which a person sets before himself as an object to reach or accomplish. In its ordinary sense, it is a determination for an achievement for reaching a particular goal. This has also been dealt with in several other statutes but in the present case what needs to be emphasized is that the transaction is clearly intertwined, connected and integrated with the acquisition of the property, the leasing out of the same and then earning of profits through rental income out of the investment. These three elements are clearly present in the instant case where all the unit holders have manifestly invested by purchasing the property in a huge mall and have finally rented it out for profits. The purpose therefore cannot be said to be a mere purchase of constructions and the entire chain of transactions cannot be segregated to give it a different meaning as suggested by Mr. Parolia, learned Counsel for the Complainants. The transaction did not terminate with the conclusion of constructions and was rather followed by its leasing out for earning profits through rent. This would also be evident from the discussions hereinafter. The purpose is of a commercial venture for earning profits and is a dominant purpose as understood in the judgments of the Apex Court in the case of ***Lilavati Kirtilal Mehta Medical Trust(Supra)*** as cited by the learned Counsel themselves. The contention that the subsequent purpose is not linked in the present case is not correct as explained above.
56. One of the judgments cited by Mr Parolia is that in the case of ***Rohit Chaudhary (Supra)***. The said case related to a complaint filed before this Commission by the purchaser of an office space in a commercial complex. The dispute therefore was about a commercial space which the Complainant stated to have purchased on the third floor from its previous allottee that was agreed to by the Builder but later on the Builder while issuing a letter for the outstanding demands unilaterally changed and re-allotted the unit to the Complainant on the 8<sup>th</sup> floor. Not only this, the premises was not delivered within the 24 months period promised in spite of the Complainant continuing to pay the instalments, that resulted in the filing of the complaint which was dismissed by the Commission on the ground of maintainability holding that the Complainant was not a consumer as the acquisition of the property was not for their livelihood and through self-employment and it was for earning profits. On an appeal filed in the Apex Court, it was found that this Commission had not arrived at the correct conclusion as the

Complainant had nowhere admitted that the commercial space booked by them was for the purpose of making profits or running any dealership business or was otherwise an investment in property. To the contrary, the Apex Court raised a presumption in para 23 of the report that the Appellants might have intended to take the property for running their business to eke out their livelihood or open an office for the purpose of dealing in the existing business or the possibility of the proposed office being used for the existing business, which possibility cannot be ruled out. The case was, however, not remanded for decision afresh as the dispute related back to the year 2006 and therefore the matter was disposed of finally by the Apex Court itself. However, while dealing with this issue, some important observations were made that need to be extracted hereinunder. Para 14 to 20 of the report are therefore gainfully reproduced.

- *14. 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 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 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.*****

*15. 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” (Chamber's Twentieth 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.*



16. *The Explanation [added by Consumer Protection (Amendment) Act 50 of 1993 replacing Ordinance 24 of 1993 w.e.f. 18-6-1993] 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”.*

17. *This Court in Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers [Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers, (2020) 2 SCC 265 : (2020) 1 SCC (Civ) 320] , has held that a straitjacket 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.***

18. *Thus, if the dominant purpose of purchasing the goods or services is for a profit motive and this fact is evident from the 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”.*

19. *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.*

**20. 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)."**

57. A perusal of the aforesaid enunciation of law would leave no room for doubt that the word "commercial purpose" was explained vis-a-vis an activity involved. It was therefore concluded that the purpose should be connected with earning profits as the main aim but again the Apex Court held that no straight jacket formula can be culled out and would depend on the facts and circumstances of each case. In the present case, the facts as discussed hereinabove together with the evidence on record clearly display the dominant intent of the Complainants to let out the properties on lease and it is for this purpose that the properties had been purchased and not merely to acquire bare constructions. The intention therefore was purely commercial which is evident from the multiple units purchased and even otherwise the manner in which they have been invested and leased out. The intention and purpose of the Complainants right from the inception was to let out the properties on lease and earn profits which is established on record.
58. The Opposite Parties have brought enough material and have discharged their burden of bringing proof on record to establish the same, hence the tests laid down in *Shri ram Chits (India) Private Limited (Supra)* has been satisfied by them.
59. There is no doubt that the object for acquiring the commercial units in the present case is for a commercial purpose. Whether the said commercial purpose is of such an extent that the Complainants would not be Consumers or otherwise is the issue that has to be answered.
60. The facts that have been brought on record leave no room for doubt that all the units which are multiple in nature in a huge mall have been purchased for commercial purpose and not only this, the properties have been leased out through the Opposite Parties under the lease agreements that are on record. The lease agreements which have been filed by the Opposite party clearly recite the letting out of all the premises in question to commercial entities on lease rent.
61. The contention of the Complainants is that this is not a large scale business or a business to business transaction inasmuch as the constructions are a transaction of business to consumer.
62. This argument cannot be accepted in the background of the transactions in the present case inasmuch as the continuity of the transaction with the leasing out of the property for profits through rent after the constructions, is a commercial activity and makes the transaction a complete commercial purpose. The question as to whether it is a large scale business or not may not be a relevant factor inasmuch as whether such a transaction is entered into on a large scale or on a smaller scale has to be viewed from the angle that these properties have been acquired in a huge mall spread over an area of more than eight acres. It is therefore a large complex developed as a mall and is a spread out of pure commercial nature on which the Complainants are investors and purchasers. This is clearly a commercial business purpose project that has come up in

the shape of a mall where purchasers like the Petitioners have invested their money to earn lease rentals. Judged from that angle, it is definitely an investment in a large scale venture of a mall.

63. It is urged by the learned Counsel for the Opposite Party that the earning of rentals by itself as understood under the Income Tax Act would not be applicable on the facts of the present case where the rentals are clearly aimed at generating huge profits through investment.
64. Thus, the declaration by the Complainants that they have acquired this for their personal use or otherwise does not seem to be a correct declaration made and as already urged before, the suppression of all these material facts, which have been brought on record by the Opposite Parties disentitles the Complainants from any relief.
65. In this regard, if under the Income Tax Act any rentals earned are not being construed as business, the definitions under the Income Tax Act would not govern the nature of the transaction for the purpose of construing the definition of the word “consumer” in the present matter. The word “services” used under the Consumer Protection Act coupled with the phrase “Commercial Purpose” has to be assessed for ascertaining as to whether the Complainants are consumer or not. This purpose is not for imposing any tax or any liability but is in order to assess the status of the Complainants and the jurisdiction of this Commission to entertain complaints on behalf of such persons who have entered into transactions of commercial nature. Thus, to transport or supplant the meaning of the word “business” as understood in the Income Tax Act cannot be a tool for interpreting the meaning of the words “consumer”, “services” and “Commercial purpose” understood in the Consumer Protection Act. It is the nature of the transaction which in the present case has to be determined as to whether it is for a commercial purpose or not for defining the jurisdiction of this Commission. As indicated above the entire transaction is a commercial venture and for generating profits which is obvious with the agreement of the leases executed by the Complainants through the Opposite Parties for profits. The contention raised by the Complainants that income from house property is not chargeable as gains of business under the Income Tax Act does not carry the argument of the Complainants any further. The order passed in the case of *Shivani Thakran (Supra)* stated to have been confirmed by the Apex court as well as the other judgments will not be applicable on the facts of the present case where the investments are on a large scale in a mall.
66. One of the arguments of Mr. Parolia is that every business involves the element of profit and loss. According to him, the transaction was only to receive the construction upon acquisition as services from the Opposite Party and hence there was no element of loss or profit involved to construe it as a commercial venture business. This argument fails inasmuch as in continuation of the constructions upon acquisition, the property has also been leased out for generating profits through lease rents. Consequently, the argument advanced on the aforesaid ground is also untenable as the transaction did not end with the construction being completed. The purpose has been manifested by its further being based out.
67. There is one important aspect concerning the objections raised by the learned Counsel for the Opposite Party regarding suppression of material facts about the possession and acquisition of multiple units by the Petitioners. This argument was sought to be met by Mr. Parolia on behalf of the complainants by contending that such information was absolutely irrelevant when the issue of self-employment and earning livelihood through

the same is nowhere involved in the nature of the services presently involved. The argument of Mr. Parolia could have been accepted had the said information not been relevant for deciding as to whether the venture is a commercial purpose or not. In the instant case, without such information which was material to decide as to whether there is a commercial venture or not was therefore essential and hence the Complainants had failed to disclose these facts in their complaint. This failure on their part therefore was in respect of material facts which have been brought on record by the learned Counsel for the Opposite Party. The reply filed to the objections by the Complainants does not dispute those facts and as a matter of fact they have not even disclosed as to whether there are any other such properties where they might have invested or not. The disclosure therefore of multiple properties having been acquired was absolutely necessary and this default on the part of the Petitioners on behalf of the Complainants is also established.

68. We will, however, not go further into this issue inasmuch as we have found on the basis of the unrebutted material already on record brought by the Opposite parties that the services availed are for commercial purpose where the acquired property has been simultaneously leased out on rent and which in our opinion is a clear transaction for generating profits in a large scale venture of mall. Consequently, for all the reasons stated hereinabove, we find that the complainants are not consumers as their entire acquisition of the property is for a commercial purpose as understood under the provisions of Consumer Protection Act 2019. The complaint is accordingly dismissed as not entertainable.

.....J  
**A. P. SAHI**  
**PRESIDENT**

.....  
**DR. INDER JIT SINGH**  
**MEMBER**