NEWSLETTER
ON
CONSUMER LAW

DECCAN EDUCATION SOCIETY'S
SHRI. NAVALMAL FIRODIA LAW COLLEGE, PUNE

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Deccan Education Society's Shri. Navalmal Firodia Law College, Pune

NewsLetter

CONSUMER LAW

Recent Judgment Analysis

Consumer law safeguards consumers' rights in transaction and protects them from unfair practices. Judicial analysis involves examining evidence, legal principles, and precedents to deliver fair judgments. Courts ensure accountability, compensation, and adherence to consumer rights, fostering trust in commercial exchanges.

SERVICE SECTOR CASES

1. Station Superintendent vs. Surendra Bhola
2. ICT Ltd vs. Ashna Roy

BANKING SECTOR CASES

1. Mr. Manoj Kumar Gupta vs. Canara Bank
2. Central Bank of India vs. M/S Polmann India Ltd.

E-COMMERCE CASES

1. Amazon Seller Services Pvt. Ltd vs. Ms. Jaspreet Kaur & Anr.
2. India Mart Intermesh Ltd vs. Dr. Rajanala Nirmala & Anr.

ABOUT DES' SHRI. NAVALMAL FIRODIA LAW COLLEGE

Deccan Education Society's Shri. Navalmal Firodia Law College, Pune, has a distinct advantage of having a unique heritage of Deccan Education Society, and we intend to fiercely guard and cherish it. We follow the same tradition of our parent society today, which is reflected in the tremendous growth of DES SNFLC in a short span of time. DES' Shri. Navalmal Firodia Law College has entered in its 20th year, keeping pace with the social change and answering responsibly, all the demands of any complex and intricate global legal set up. We have brought about tremendous metamorphosis in terms of inculcating legal education through innovative pedagogy.

We believe in education as the way of revolution and ultimate development. We are commitment to mould the young minds by giving them insight into multi-disciplinary aspects of law.

We live and strive by our motto--

"Making Excellence a Prevailing Attitude"

ABOUT LEGAL RESEARCH CELL

Legal Research Cell of DES SNFLC has been conducting various competitions with an aim to provide high quality education for inculcating research culture and nation building. Our objective is to equip students with refined research skills and analytical acumen, fostering a profound appreciation for evolving juristic trends and cultivating critical thought processes. We aim to imbue both faculty and students with a culture of research, promoting an environment where scholarly inquiry thrives.

Our commitment extends to the dissemination of research findings through esteemed and high-quality research journals. We aspire to initiate and champion an interdisciplinary approach, enriching the landscape of legal research with diverse perspectives and insights.

The Legal Research Cell conducts workshops on research methodology. Members also participate in research oriented competitions like Legislative Analysis, Research Papers, Judgment Analysis, Legal Quiz etc. We are the first college to host a National Judgment Analysis Competition and Bill Analysis Competition, which helps in building analytical aptitude among law students. The Cell also publishes a law journal – "Fiat Justitia" every year to develop research culture and inculcate research spirit in legal arena.

Legal Research Cell

Judgment Analysis Competition

Participants were required to analyze the case, considering the legal issues involved, the arguments presented by both parties, and the final judgment delivered by the court.

Legislative Drafting Competition

Event with a purpose to let the participants understand the art of knowing the real meaning of an enactment by giving its natural and ordinary meaning to the words of the enactment.

Research Day Competition

A dynamic platform which aimed at enhancing the legal research and writing skills of students, to instill and nurture effective legal research practices among them, providing a valuable opportunity to present their innovative ideas in a competitive yet supportive environment.

Legal Quiz Competition

It was conducted to test the student's theoretical knowledge and comprehension of provided legislation at both national and international levels.

Workshops

The purpose of conducting workshops is to provide practical, hands-on training and legal skill development for participants, enhancing their ability to apply theoretical knowledge to real-world legal problems and scenarios effectively.

Seminars and Lecture Series

The purpose is to disseminate specialized knowledge, encourage intellectual exchange, and foster collaboration, enhancing understanding and innovation within academic or professional communities.

Panel Discussion

The objective is to delve into specific topics through expert perspectives, fostering a rich dialogue that enhances understanding. It allows diverse viewpoints to be explored and debated, engaging the audience, often sparking new ideas and solutions through collaborative discussion.

Client Counselling

The objective of client counseling competitions is to develop' skills like effective communication, legal advising, and ethical decision-making, by simulating real-life client interactions and challenges, thereby preparing them for practical aspects of legal practice.

FROM THE EDITOR’S DESK…

It makes us immensely proud to introduce the first edition of the Newsletter on Consumer Law, published by DES’ Shri. Navalmal Firodia Law College, Pune. The objective of launching this Newsletter on Consumer Law is to create awareness about consumer rights.

Our Parent Society- Deccan Education Society has always remained alert to the changing needs of the larger social set-up for which and within which it functions. As a Law college established under the illustrious banner of the Deccan Education Society, we are driven by the pursuit of excellence and unwavering dedication to bring about a tremendous metamorphosis in terms of inculcating legal education through innovative pedagogy.

DES’ Shri. Navalmal Firodia Law College has launched many campaigns to uphold the cause of social justice by creating awareness amongst the weaker sections of the society. Joining hands on the same path the Legal research cell, DES SNFLC has taken this initiative to publish a newsletter to promote consumer rights and make consumers aware of the recent developments in the field of consumer Law.

Consumer law in India aims to protect the rights of consumers by ensuring fair business practices and providing legal recourse against defective products or services. The Consumer Protection Act of 1986 and subsequent amendments provide a framework for consumer protection, including the establishment of consumer forums and courts to resolve disputes. The law also sets out guidelines for product labeling, advertising, and warranties, and provides for penalties for non-compliance. This first edition covers case analysis of recent judgments in various sectors such as E- Commerce, Banking Sector and Service Sector. We have tried to bring the latest developments in the area of consumer law in the simplest manner possible. We would like to thank all the contributors of this issue and hope that this newsletter reaches the masses and makes its contribution in structuring and strengthening the legal system in India.

Regards,
Editorial Board
Dr. Aishwarya Yadav
Editor-in-Chief,
Anuja Sharma
Co-Editor


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CONSUMER
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WORLD
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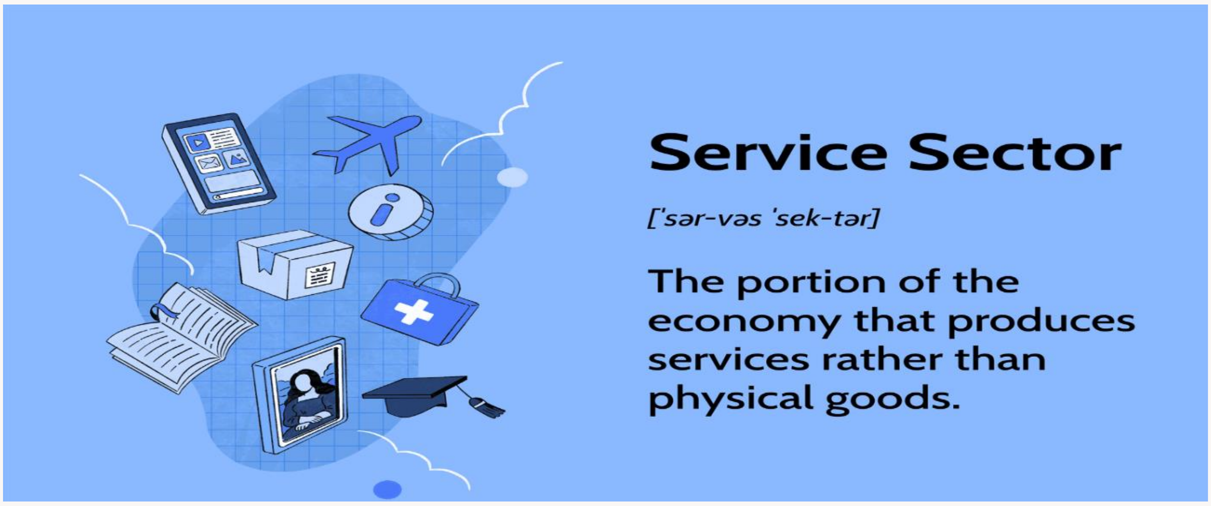
RIGHTS
DAY


Consumer Rights
All about you need to know

SERVICE SECTOR CASES



1. **Station Superintendent v. Surendra Bhola (2023 SSC Online SC 741), Order dated 15 June 2023**

- **Railways not liable for theft of passenger's belongings -the theft of personal belongings on train is not deficiency in service by Railways, SC sets aside concurrent orders by NCDRC, SCDRC and District Consumer Forum.**

Brief Facts:

Mr. Surender Bhola ("Respondent") was travelling through Indian Railways train and was carrying ₹1 Lakh in cash in a belt tied around his waist. The cash got stolen from the Passenger during the train journey.

The Passenger filed a claim before the District Consumer Forum, seeking reimbursement of the stolen amount from the Railways. It was argued that the theft of money had taken place due to deficiency in service provided by Railways.

The District Consumer Forum allowed the claim and directed Railways to reimburse ₹1 Lakh to the Passenger. Thereafter, the State Consumer Dispute Redressal Commission and the National Consumer ("NCDRC") dismissed the appeals and upheld the order of District Consumer Forum.

Issue:

Whether theft of personal belonging of passengers on train is fall within deficiency of service.

Reasons for Order:

The Court stated that, "We fail to understand as to how the theft could be said to be in any way a deficiency in service by the Railways. If the passenger is not able to protect his own belongings, the Railways cannot be held responsible.”

In this case court ruled that if a passenger is unable to protect their belongings, the Railways cannot be held responsible. However, it does not necessarily mean that Railways are exempt from responsibility in all theft cases. This ruling sets a precedent, but each future case will be assessed independently based on its specific circumstances and evidence.

Order:

The Court allowed the appeal and held that the theft of personal belongings of a Passenger is not “deficiency of service” by Railways and set aside orders passed by Consumer forum whereby Railways was directed to reimburse the stolen amount of cash to the Passenger.

2. **<u>ICT Ltd v. Ashna Roy</u> (2023 SCC online SC 108) order dated 7 February 2023.**

- **Determination of compensation should be based on evidence and not based solely on the Respondent consumer's claims, SC asks NCDRC to decide matter afresh due to award of excessive compensation.**

Brief Facts:

The woman visited the saloon of the Hotel ITC Maurya, New Delhi on 12.04.2018 for hair styling so that she would have a clean and groomed appearance before the interview panel where she was to appear after a week.

As her usual hair dresser was not available that day, she was assigned another hair dresser to whom she gave specific instructions in the following terms: “long flicks/layers covering her face in the front and at the back and 4- inch straight hair trim from the bottom”.

The woman was instructed to keep her head down and as she wears high powered spectacles (removed at the time of hairstyling), she could not clearly see herself in the mirror as to what the hair dresser was actually doing. When the hair styling was complete, to her utter surprise, she noticed that her entire hair was chopped off leaving only 4 inches from the top and barely touching to her shoulders which was quite contrary to the instructions given by her. Upon complaint, the Manager did not raise any bill.

She claimed that as a result of the faulty haircut, she could not continue to lead her normal busy life as she no longer looked pretty; she had to face great humiliation and embarrassment; her career in the world of modelling was completely shattered; she went into a state of depression.

When she raised a complaint again, the salon offered her services for extension of hair for the interview and also for free treatment to which she apparently agreed.

However, she was once again left disappointed as excess Ammonia was used during the treatment which completely damaged her hair and scalp resulting into lot of irritation and burning in the scalp. She again complained about the damage caused where after a spray was used which gave her temporary relief. Thereafter, her hair had become hard and rough and the respondent could not even run her fingers through it. She flagged this issue with the hotel staff but they were "abusive, rude and disrespectful" and she was threatened from visiting the salon again.

Left with no option, the woman filed a complaint before the NCDRC alleging deficiency in service, seeking written apology from the management as also compensation of ₹3 crores for harassment, humiliation, mental trauma, loss of career, loss of income and loss of future prospects. The NCDRC, based upon the evidence led which included the affidavits, photographs, CCTV footage, WhatsApp chats and other material on record, came to the conclusion that there was deficiency in service. The NCDRC awarded a lumpsum compensation of ₹2 crores.

Issue:

What would be an adequate compensation taking into consideration the various claims made by the women either under different heads or lumpsum amount.

Reasons for Order:

The Court noticed that there was no reference to or discussion on any material evidence to quantify the compensation in the NCDRC order. In fact, the Supreme Court repeatedly requested the woman, who was appearing in person, to produce the material regarding her advertising and modelling assignments in the past or for which she had entered into a contract or agreement for the present and future with any of the brands to show her expected loss. But she failed to produce the same.

And court made observation "In the absence of any material with regard to her existing job, the emoluments received by her, any past, present or future assignments in modelling which the respondent was likely to get or even the interview letter for which the respondent alleges she had gone to the saloon to make herself presentable, it would be difficult to quantify or assess the compensation under these heads. What could be quantified was compensation under the head of pain, suffering and trauma. However, amount of ₹2 Crores would be extremely excessive and disproportionate."

Order:

Court set aside the order of NCDRC awarding V2 crores as compensation for loss of income, mental breakdown and trauma and pain and suffering, the Court remitted the matter to the NCDRC to give an opportunity to the woman to lead evidence with respect to her claim of ₹3 crores, after observing that if the woman has material to substantiate her claim, she may be given an opportunity to produce the same. Once deficiency in service is proved then she is entitled to be suitably compensated under different heads admissible under law.

BANKING SECTOR CASES

1. **Mr. Manoj Kumar Gupta vs. Canara Bank (CC/181/2023)**

   Order of National Consumer Disputes Redressal Commission dated 12.01.2024.

- **Transfer of possession of an immovable property through an auction is not service.**

Brief Facts:

The complainant on 26.10.2018 had participated in an auction conducted with regard to the sale of a cold storage by the Canara Bank. The complainant, being the highest bidder, the bid was knocked down in his favour. He deposited the 10% of the bid amount and thereafter paid the balance amount. The said possession of the cold storage was handed over on 26.11.2019 and the deed of conveyance was executed on 12.12.2019.

The contention was that, even though, entire payment of the sale consideration towards the auction was made, yet possession of the cold storage was not delivered within time after auction. Due to deficiency in service, on part of the bank, the complainant could not harness the services of the cold storage for his profit for one year and thereby suffered losses, on account of, disruptions in the possession and running of cold storage.

The complainant had also filed complaints before the Banking Lokpal and with the Reserve Bank of India to seek relief but no action was taken. The complainant filed a civil suit before the learned Civil Judge (Sr. Division) Aligarh (UP) but it was withdrawn on 10.01.2023. It was also stated that the complaint was not filed within the statutory period of two years as the complainant was pursuing the remedies before the appropriate forums.

A complaint seeking relief against the act of alleged negligence or omission to timely handover possession of the cold storage by bank to the complainant was filed before the National Consumer Disputes Redressal Commission was filed on 21.12.2023.

Issue:

Whether this complaint be maintainable in respect of purchase of an immovable property through an auction.

Reason for Order:

The commission observed that a perusal of the possession handing over certificate dated 26.11.2019 did not indicate that the said possession was taken under protest or was refused to be taken on account of the delay. References were made to the previous judgements of the apex court in this regard.

Moreover, it was found out that the transaction is a transfer of possession of an immovable property through an auction, which is not service as per the definition clause of the Consumer Protection Act, 2019. Therefore, it does not give rise to a grievance to maintain a consumer complaint as defined under the Consumer Protection Act, 2019.

Order:

Thus, in this case, the complainant was neither a consumer nor the complaint was a consumer complaint nor any services had been established to be deficient for it to qualify as a consumer complaint. Hence, transfer of immovable property cannot be made the basis of a consumer complaint for deficiency in service. Consequently, the complaint was not entertained as a consumer complaint.

2. **Central Bank of India vs. M/S Polmann India Ltd. (FA/1631/2018)**

   Order of National Consumer Disputes Redressal Commission dated 04.03.2024

   - **Expiry of limitation period bars the grant of relief.**

Brief Facts:

It was alleged by the Respondent-Complainant that between 23.02.1999 and 17.04.2001, 23 cheques were presented for payment to the Appellant Bank on their behalf for various sums ranging from ₹50,000/- to ₹2,00,000/-. These cheques were duly encashed. Subsequently, it was noticed by the Respondent-Complainant that there were certain discrepancies in the Bank Account amounting to ₹25,00,000/- and therefore, requested the Appellant Bank on 28.04.2001 to provide the original cheques or photocopies on the ground of suspected misappropriation by one or more of their staff by way of unauthorized withdrawals. In response to this request, a statement of account was being regularly provided by the Appellant Bank to the Respondent-Complainant to which there had not been any objection by the respondent.

Respondent – Complainant knew of misappropriation of funds in April 2001or at least from 17.10.2001 when it addressed a letter to the Assistant General Manager of the Appellant and sought reimbursement of ₹25,00,000/-.

According to the Appellant, the complaint was filed by Respondent – Complainant on 24.08.2004, before the State Commission seeking reimbursement of ₹25, 00,000/- with interest of ₹30, 50,000/- @ 13.5% p.a. and further interest @ 15% till realization along with costs of ₹3,00,000/- for mental agony. The said complaint before the State Commission was filed on 24.08.2004 after a period of 3 years and 4 months, which was after expiry of the period of limitation under Section 24-A of the Act**.** Prior to this, a complaint was filed before the Bank Ombudsman on 12.04.2004 by the Respondent-Complainant, which had been dismissed on the ground that it was filed beyond the period of one year from the date of cause of action prescribed.

According to the Respondent-Complainant the matter was under correspondence with the Appellant and therefore, the period of limitation should exclude this period. It argued for upholding of the order of the

State Commission, which was detailed and had considered all aspects including that of limitation. It was contended that the State Commission had rightly concluded that this was a matter of a continuing cause of action and therefore, proceeded to adjudicate in the matter on merits.

An appeal was filed by the Appellant before the National Consumer Disputes Redressal Commission on 12.09.2018 to set aside the impunged order of State Commission, Maharashtra.

Issue:

Whether the State Commission was correct in deciding the matter on merits without considering the applicability of Section 24 A of the Act with regard to the limitation.

Reason for the Order:

It was found by the Commission, that the matter of discrepancy in cheques encashed, had come to the notice of the Respondent-Complainant in April 2001, which subsequently was brought to the notice of the Appellant Bank and there was exchange of some correspondence in this regard. In response to this, Appellant had provided statements of account with respect to the concerned Bank Account to the Complainant. The Appeal before the State Commission was filed much later on 26.08.2004. In this period, Respondent – Complainant had also approached the Banking Ombudsman who had turned down the complaint on the ground that it was filed beyond the period of one year of limitation for filing of such a complaint. The Respondent-Complainant was therefore well aware and advised on the remedies available.

Order:

The Commission observed that the State Commission had erred in not considering the fact that the Complaint before it was barred by limitation under Section 24 A of the Act, especially since no application for condonation of delay was filed before it by the Complainant explaining the reasons for the delay.

Therefore, the impugned order was set aside on the ground of being barred by limitation.

E-COMMERCE CASES

1. **Amazon Seller Services Pvt.Ltd v. Ms. Jaspreet Kaur & Anr. (A/1004/2022)**

   Order of State Consumer Disputes Redressal Commission, Punjab, Chandigarh dated 20.02.2024

   - **Amazon cannot escape from liability on the ground of being mere intermediary.**

Brief Facts:

Complainant Ms. Jaspreet Kaur had placed an online order of foldable laptop desk from Amazon website on 12.05.2021. However, received the rice bowl in dirty condition on 18.05.2021 instead of aforesaid wooden laptop table. Opponent Party No.1 (Amazon) had offered to refund the money but the Complainant had requested for replacement of the product. In response to complaint filed with National Consumer Helpline (NCH), Amazon replied that it cannot replace the product as the delivered product was not returned after expiry of 'return window'.

District Consumer Disputes Redressal Commission, Gurdaspur ordered Amazon Co. to arrange delivery of the product, to pay ₹5,000/- as compensation and also to pay another ₹5,000/- as cost of litigation etc.

Amazon (Opponent Party No. 1) had preferred this appeal claiming grounds such as-

- ✓ It was merely operating as an e-commerce marketplace & thus only as intermediary.

- ✓ 'Conditions of Use' displayed on Amazon portal which excludes its liability and limits its role only to intermediary.
- ✓ The contract of sale was executed between the Complainant and Respondent No.2/Seller and as such there was no privity of contract between Amazon and Complainant.
- ✓ Consideration was paid by consumers directly to seller.

Issue:

Whether online marketplace operator/portal can be held liable for deficiency in service/unfair trade practice for the violation of right of Complainant, who was a consumer in the present case?

Reasons for order:

The Respondent/Complainant had availed services of Amazon to purchase foldable laptop desk. Thus, Respondent/ Complainant is covered under the definition of 'Consumer'. Amazon cannot be absolved from the responsibility towards delivery of wrong product.

The seller was registered with Amazon and it used 'Fulfilled by Amazon' Service (FBA) by which the seller only needs to send its products to Amazon fulfilment centers, which are in turn delivered to the consumers. Thus, Amazon cannot escape from its responsibility under the garb of 'intermediary'.

Online market place Company earns revenue each time a consumer clicks and visits on its website. The same is done as per the terms and conditions between the online portal company and the sellers for a consideration.

Decision:

Amazon is held personally and jointly liable for the 'deficiency in service' and harassment caused to the Complainant. Decision of District Consumer Disputes Redressal Commission was upheld.

2. **<u>India Mart Intermesh Ltd. Vs Dr. Rajanala Nirmala & Anr.</u> (Revision Petition No. 692 Of 2020)**

   Order of National Consumer Disputes Redressal Commission, New Delhi dated 18.08.2023

   - ➢ Not availing 'Payment Protection Policy' may debar consumer from claiming relief.

Brief Facts:

Complainant made payment of ₹32,460/- for 4 Single Cots Bed Spacewood Wenge Modular Furniture to vendor King Furniture (Respondent no. 2) through

Indiamart (Respondent no. 1) on 25.07.2018. The Complainant lodged her first grievance with a representative of Indiamart on 16.08.2018 for delayed delivery by (Respondent no. 2). After several days of delay, the Complainant received 4 Single Cots through Railways for which the Complainant had to bear additional freight cost of ₹1,207/- and upon delivery it was found out that the product was of cheap plywood quality instead of Spacewood material. The Complainant contacted Respondent No. 2 requesting for full refund and he assured the Complainant that he will send someone to collect the items, and that he will issue refund after receiving the product. The Complainant filed complaint before the District Consumer Disputes Redressal Forum, North Goa. The Forum discharged Respondent no. 1 (Indiamart) and directed Respondent no. 2 (vendor King Furniture) to take back the product and return to the Complainant the amount of ₹ 32,460/- with interest @ 18% p.a. from the date of purchase till final payment within one month of the Order, along with ₹25,000/- towards mental agony and ₹10,000/- as cost of litigation.

Complainant appealed before the State Commission against discharge of Petitioner Indiamart. State Commission held both the respondents jointly and severally liable to comply with the directions of the District Commission. Against the Order of the State Commission, the Petitioner/Indiamart filed Revision Petition before National Commission.

Issue:

Whether e-commerce site is used as a primary source of purchase in order to hold it responsible for deficiency in service?

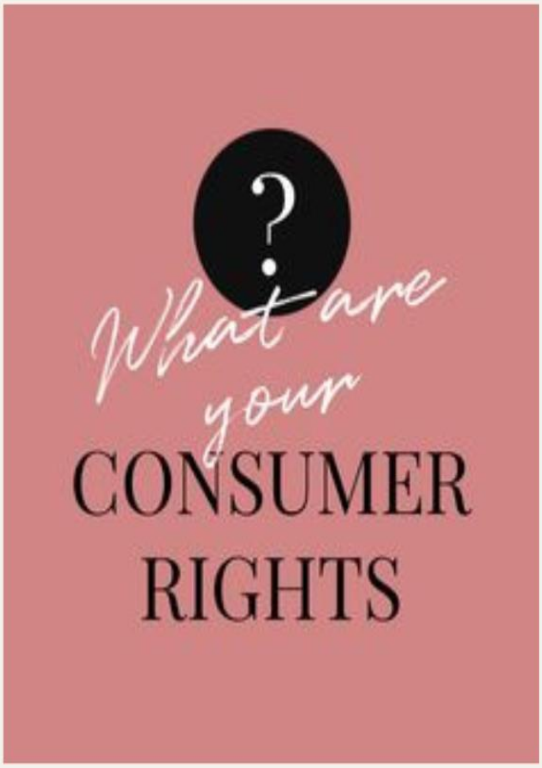
Reasons for order:

Complainant used platform of Indiamart only for making payment to Respondent No. 2 / Vendor, who provided the payment link to the Complainant. The Complainant did not avail of the 'Payment Protection Policy'. The main feature of this payment plan was that the Indiamart takes the payment from buyer and releases it to the Vendor only after verification. A representative of Indiamart contacts the buyer after filling the aforesaid form and verifies the receipt. In the present case Complainant made the payment without 'Payment Protection Plan' and was therefore not covered by this Policy.

Decision:

The Order of the State Commission and the District Forum are set aside and the Complaint is dismissed.

"Every man is a consumer and ought to be a producer."
- Ralph Waldo Emerson



"CONSUMERS DO NOT BUY PRODUCTS. THEY BUY PRODUCT BENEFITS."

DAVID OGILVY

Competition is not only the basis of protection to the consumer, but is the incentive to progress.

Herbert Hoover

CONVENORS

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CHAIRMAN, CDC, DES SNFLC

DR. SUNITA ADHAV

PRINCIPAL, DES SNFLC

FACULTY CO-ORDINATORS OF LEGAL RESEARCH CELL

DR. AISHWARYA YADAV

DES SNFLC

ASST. PROF. ANUJA SHARMA

DES SNFLC