

GOVERNMENT OF JAMMU & KASHMIR
DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
KUPWARA

Coram: -

1. Peerzada Qousar Hussain President

2. Ms Nyla Yaseen Member

Consumer Complainant No: 105/2024

**Ab Rashid Bhat S/o Late Ab Ahad Bhat R/o Hafrada, Tarathpora,
Ramhall Kupwara.**

Versus

- 1. Bajaj Allianz General Insurance Co. Ltd. 3rd Floor, Lake City Plaza,
Karan Nagar, Srinagar-190010**
2. J&K Bank B/U Tarathpora, Kupwara.

.....(Opposite Parties)

Date of Institution: 19-09-2024

Date of Decision: 17-09-2026

Appearing Counsel:

For the complainant: Adv. Sheikh Fayaz and Adv. Adam Malik

For the OP's: Adv. Zubair Ahmad Wani and Adv. Zahoor Ahmad wani

Judgement

The present Complaint has been filed before this Commission under section 12 of Consumer Protection Act 2019 on 19-09-24 alleging therein deficiency in services on the part of OPs with prayer to grant the following relief:

- 1. Direction to the OP ① to pay the insurance claim amount of Rs. 16,50,000/- (Sixteen Lac Fifty Thousand Only) alongwith interest from the date of incident until the realization for the damages caused to the complainant's house.**
- 2. Direction to OP ② to stop deduction of loan instalments from his account until the settlement of the insurance claim or final disposal of the complaint.**
- 3. Award a sum of Rs 5,00,000/- (Five Lacs Only) for causing mental agony and harassment due to the deficient services and Rs 30,000/- as litigation charges.**

Brief facts

The Complainant availed loan of Rs 16,50,000/- (Sixteen Lac Fifty Thousand Only) from J&K Bank B/U Tarathpora, Kupwara hereinafter referred to as OP ② for renovation of his house situated at Hafthrada Tarathpora, Ramhal, Kupwara on 20-09-2020. The Complainant mortgaged the house with the bank. The said house was insured with Bajaj Allianz General Insurance, hereinafter referred to as OP ①, bearing policy No. 0G-24-1299-4055-00003041 which was effective from 21-11-2024 to 20-11-2025. The Complainant paid premium amount of Rs 10,286/- (Ten thousand Two Hundred Eighty-Six) for the said insurance policy. The complainant's contention is that the said house was insured continuously and the insurance was renewed from time to time. However, during the subsistence of the insurance policy the insured house of the Complainant gutted in a fire incident which occurred on 28-07-24. Consequently, the FIR was lodged at the concerned Police Station.

The contention of the Complainant is further that he immediately informed the OP ② about the incident as the house was insured through the said bank. Consequently, the OP ① deputed a Surveyor on 20-08-24 who conducted survey & demanded some documents from the Complainant. The contention of the Complainant is further that he provided the requisite documents to the Surveyor, however the OP ① refused to settle the insurance claim on the plea that his name was not mentioned in FIR.

Non-settlement of the insurance claim constrained the complainant to approach the District Consumer Commission Kupwara for redressal of his grievances.

Upon service of notice the OP ① submitted the objections contending therein that the allegations made in the Complaint are denied. The Complainant is to be put to strict proof with regard to the truth. The Complainant has not filed all the relevant records along with the Complaint and in the absence of the same it is very challenging for the respondent to effectively address the issues raised by the Complainant. As such the Complaint deserves to be dismissed outrightly.

The OP 1 further contended that the Complainant has filed the complaint wrongly asserting therein that there is deficiency in service on the part of OP 1 without evidencing any deficiency in service by the OP 1. Besides the Complainant has not approached this commission with clean hands and has concealed serious material of facts which would have otherwise obliterated the need for filing the Complaint.

The Complaint of the complainant was registered. Consequently IRDA licensed surveyor was appointed under Section 64UM of the Insurance Act of 1968 to assess the loss and to survey about the genuineness of the claim.

Additionally the Surveyor sought some documents from the Complainant to establish the claim; however the Complainant failed to submit the requisite documents. The OP 1 further contended that the contents of the Complaint are not only full of conjectures and surmises but are also a clear attempt on the part of the Complainant to 'abuse the legal process' The claim of the Complainant is not admissible due to non-submission of the documents due to which it cannot be ascertained as to whether the claim of the Complainant is to be admitted or rejected. Hence the deficiency is on the part of the Complainant who failed to cooperate with the OP and the surveyor.

The OP1 further contended that the insurance policy is a legal contract and its formation is subject to fulfillment of the requisites of Contract as defined under the Indian Contract Act 1872, Its performance is also directly proportional to the performance of both the parties.

The OP1 further contended that the rights of the Complainant/insured can trigger only when there is adherence to the terms and conditions of the policy. If the Complainant fails to discharge its part of obligation, the respondent cannot be held responsible for performing its part. The Complaint is liable to be dismissed. There is no insurable interest of the Complainant in the insured premises and the Complainant is to be put to strict proof, failure of which is also sufficient ground to dismiss the complaint.

Furthermore, the OP1 submitted the case dairy/claim file of the complainant and the relevant entries contained in the case dairy which forms part of the record, have also been taken into consideration to the extent they are relevant for determination of the controversy involved in the complaint.

The OP1 appointed surveyor to conduct the survey of the insured property of the complainant. It was contended by the Surveyor that he visited the insured premises on 20-8-24 and after conducting inspection of the said premises in presence of the insured's representative namely Nisar Ahmad Bhat, he observed as follows:

- 1) That the reported building was raised to ground.
- 2) That the construction of Plinth was under process (Fresh construction).
- 3) That the fire remnants were noticed along the one side of the compound.
- 4) That during the course of survey some undamaged windows doors and joists were seen piled at different location around the reported insured building.
- 5) That the breach of condition viz. duties and responsibilities of the insured subsequent to loss/claim was noticed, the building in question was raised to ground without informing the insurer. The Surveyor further contended that after conducting the survey he dropped a letter to the insured on dated 21-8-24 wherein the observations were penned down and also reasons for late information was sought from the insured. He collected the photographs during the course of visit and observed that:
 - 1) The complete roofing was gutted in fire.
 - 2) Windows & doors of the first floor were damaged due to fire.
 - 3) The ceiling of first floor was damaged.
 - 4) The portion of ceiling ground floor planks were damaged.
 - 5) The ground floor had escaped the direct impact of fire alongwith the windows, doors and ceiling joists had escaped the direct impact of fire. The surveyor further contended that the photographic evidences shows some sun dried bricks as well.

INVESTIGATOR'S REPORT:

The insurer has forwarded the report of M/s. G J Dhar & Associates to him and after going through the said report he reproduced the conclusion drawn by the said investigating Agency as below:

"On the basis of evidence and documentary support, it is primarily established that the insured is also the shareholder of the gutted house. After making the assessment he is held entitled to the claim of the respective share in the house whatever is being assessed. However, there is no expressive distribution (takseem Nama) given by his father resulting in legal confusion. The claim would also be subject of the outcome of the Court order. As per the statement of the Insured, the brothers were allowed to use the gutted house temporarily. The brothers of the insured were afforded chance to file affidavit to support their claim which they failed to file. He claims that they have no share in the house. However as claimed by the insured they have obtained shares. The claim of the insured could be considered as per the subsequent report of the Police and Tehsildar concerned". The surveyor further contended that the conclusion drawn by the investigators isn't conclusive because the insurable interest of the insured in the subject gutted building is yet to be ascertained which is situated at Hafthrada, Tarathpora & was being used for residential purposes by Mr. Ghulam Nabi Bhat, Mr. Mohammad Maqbool Bhat & insured viz. Mr. Abdul Rashid Bhat.

CONSTRUCTION, LOCATION & OCCUPATION:

Plinth.	RS masonry
Superstructure.	Burnt clay & sun-dried bricks in mud mortar.
Ceiling.	Wooden planks fixed to timber joists
Flooring.	Cement concrete/ wooden.
Roofing.	CGI sheets fixed timber trusses

ASSESSMENT OF LOSS:

The insured concerned has furnished an estimate of loss to the tune of Rs. 72,58,565/- (Seventy Two Lacs Fifty-Eight Thousand Five Hundred Sixty Five) duly framed and signed by a Junior Engineer on account of building and HHG. The said estimate is on percentage basis and doesn't commensurate with the actual specifications highlighted in the photographs forwarded by the insured and Mr. Naveed Peerzada (surveyor). For instance, the concern Engineer has remained silent about the sun-dried brick masonry instead has claimed for brick masonry in cement mortar when the masonry was in mud mortar. Similarly, the concern Engineer has claimed steel rolling shutters (9 No's) which weren't present in the subject gutted building as per the Photographs forwarded by the insured concern. Moreover, the concerned Engineer has claimed for RCC slab and cement plaster on internal as well as on external surface which too differs from the actual building specifications highlighted from the photographs forwarded by the insured concerned. The estimate thus furnished doesn't commensurate with the actual building specifications and therefore can't be relied upon.

The surveyor further stated that he computed the area of the building as per the photographs and drafted the floor plans appended herewith for reference and record and accordingly framed the assessment of the loss on the annexed sheets marked as "Annexure I" forming part of his report. The assessment derived is purely based on the photographic evidences and the net assessment derives to Rs. 14,49,822/- (Fourteen Lacs Forty Nine Thousand Eight Hundred Twenty-Two) only. Since, the photographic evidences doesn't suggest the building to be in "total loss condition" and the insured alongwith his brothers had raised the subject building to ground, prior to their visit and even hasn't informed the insurer about the same, as such he had sub-standardized the assessed amount by 25% to arrive at a net loss which amounts to Rs. 10,87,366/- (Ten Lac Eighty Seven Thousand Three Hundred Sixty-Six) and the said figure was then equally distributed among the two brothers of the insured along with the insured, to arrive at the insureds share which amounts to Rs. 3,62,456/- (Three Lac Sixty Two Thousand Four Hundred Fifty Six only).

In the light of inspection investigation report, the extend of insurable interest of the insured is questionable and has not been yet ascertained. The OPs left no other alternative but to distribute the assessment equally among the three reported shareholders viz. Ghulam Nabi Bhat, Mohammad Maqbool Bhat and the insured Abdul Rashid Bhat. The insurers are requested to ascertain the extend of the insurable interest on the insured in the subject gutted building prior to indemnification. The above report is issued without prejudication and subject to terms and conditions of the policy.

The OP ② in the written objections contended that the Complainant approached the bank for sanction of housing loan after demanding registered mortgage deed and the two guarantors as security for release of loan amount of Rs 16,50,000/- (Sixteen Lac Fifty Thousand Only) and after execution of all requisite documents, the loan amount of Rs 16,50,000/- (Sixteen Lac Fifty Thousand Only) was released.

The Complainant adduced witnesses namely Liyakat Ali Badana S/o Atif ud Badana R/o Hafthrada, Mr. Ashiq Hussain Mir s/o Mohd Sadiq Mir R/o Hafthrada and Sanaullah Bhat s/o Ghulam Ahmad Bhat R/o Hafthrada and Ab Rashid Bhat s/o Ab Ab Ahad Bhat R/o Hafthrada as witness in his own case.

The witness **Liyakat Ali Khan** on cross examination stated that the Complainant availed loan from the Bank. The house of the Complainant was damaged due to the fire incident. He does not know about the insurance of the house, and does not even know as to whether any insurance official visited the site after incident. However, Police, Patwari & Tehsildar carried out inspection at the site. He is the guarantor of the Complainant in the bank. The loan amount was disbursed in favor of the complainant properly.

Another witness of the complainant Mr. Ashiq Hussain Mir on cross examination stated that when the fire incident occurred, the police came after one hour, he gave the statement before the police and after occurrence of the fire incident, he accompanied the Complainant to the insurance company. There were three share holders in the house.

Another witness of the Complainant namely Sanaullah Bhat on cross examination stated that the Complainant constructed the house but he does not know about the loan. Police visited the spot at the time of incident. His statement was recorded and police lodged an FIR.

Ab Rashid Bhat the complainant as witness in his own case on cross examination stated that the incident occurred on **28-29 July 2024**. House was situated at Hafthrada, Dardpora which was two storied with hall and house was insured with **Bajaj insurance**. The insurance policy was valid at the time of incident, Police, Fire and Emergency service reached the spot. He reached the spot at 12 o'clock at night as he was at Srinagar. Police had recorded the statement of the neighbors however his statement was recorded in police station. The complainant as witness in his own case further stated that he submitted an application to the bank, thereafter surveyor came on spot after 15 days of incident. He provided all the revenue extracts and other documents to the surveyor. He suffered loss of **80,00,000/- (Eighty Lacs Only)** however the sum assured was **72,00,000/- (Seventy Two Lacs Only)**.

Another independent witness adduced by the Complainant namely **Gh Mohidin Fireman** on cross examination stated that spot verification was conducted vide Number **ADF/FKC/2024/1954** on **21-10-24**. The incident is of 28 and 29 of July 2024, and the Vilgam Station Crew went to the spot on the date of incident. However he did not visit the spot personally. The damaged property was residential house which was comprising of three stories, alongwith a Cow Shed and a Fire Wood Shed, both were single storied. All structures had **CGI SHEETY ROOFED**. The house roof, 1st floor and 2nd floor alongwith household goods got damaged severely.

Per contra, the OP1 adduced two witnesses in the matter namely **Mehraj-ud-din Shah Surveyor** and Muneeb Ahmad Khan

The witness namely **Mehraj-ud-din Shah Surveyor** on cross examination stated that the incident occurred on 28-07-24. The property which got damaged was residential house. When he reached the spot, he found that the fresh construction of the house was going on, on spot and the debris were removed and developed around. He made an assessment on the basis of evidence in shape of photographs supplied by the insured. The witness further stated that there was a tailoring unit which has also suffered loss. He made the assessment on the basis of photographs and reviews developed around. The loss which he assessed was up to Rs **14,49,822/- (Fourteen Lacs Forty Nine Thousand Eight Hundred Twenty-Two)**.

Another witness namely Muneeb Ahmad Khan on cross examination stated that he has been working as law officer with the OP since 2015. The insurance policy of the instant case has been found genuine. He has not visited the spot personally. It is the Surveyor who can say as to within how much time the Survey is to be conducted after receiving the intimation. The witness further stated that he has received several documents of the Complainant through Surveyor which are lying with the insurer and annexed with insurance claim file.

Since the documents placed on the record reveals that the house in question was insured with the OP1 for a sum of Rs 72,00,000/- (Seventy Two Lacs Only).

The Complainant claims to be one of the co-sharer in the said property alongwith his two brothers. During the subsistence of the policy the house was gutted in fire incident. The complainant accordingly lodged a complaint with the OP1.

It is not in dispute that the OP1 appointed a Surveyor to assess the loss who upon inspection on the site carried out survey and assessed the loss of Rs 14,49,882/- (Fourteen Lacs Forty Nine Thousand Eight Hundred Twenty-Two). However, while taking into consideration the Complainant's share in the property, he recommended an amount of Rs 3,62,456/- (Three Lac Sixty Two Thousand Four Hundred Fifty Six only).

. towards insured's share.

It is indispensable to mention here that the principal objection raised by the OP1 is that the police report and the Fire & Emergency report does not mention the name of the Complainant. We have meticulously considered the rival submissions of the parties and have examined the material available on record.

Since the fact that the name of the insured is not mentioned in the police as well as in the Fire and Emergency report cannot by itself lead to the conclusion that the Complainant had no interest in the insured property. The primary purpose of such report and documents is to record the occurrence of the fire incident and the related circumstances of the incident, and not necessarily to determine the inter se share of the Co-owners. Therefore, the absence of the name of the Complainant in such reports cannot defeat an otherwise supported insurance claim.

More importantly the Complainant's claim has been examined by the Surveyor who was appointed by the Insurance Company to assess the loss and the said surveyor assessed the net loss of Rs. 10,87,366/- (Ten Lac Eighty Seven Thousand Three Hundred Sixty-Six) - and recommended an amount of Rs.3,62,456/- (Three Lac Sixty Two Thousand Four Hundred Fifty Six only).

as the insured's share.

However, the OP1 has not placed any convincing material on record to demonstrate that the Surveyor's assessment is erroneous. At the same time the Complainant has also failed to establish any legal or evidentiary basis for claiming the entire sum assured of Rs 72,00,000/- (Seventy Two Thousand Only).

Furthermore, the material available on record establishes that the insured residential house suffered damages due to fire and that the Complainant had an interest/share in the insured property. The objections based merely on the basis of absence of the name of the complainant in the Police and Fire and Emergency report can not sustain. Because of the fact that the house was jointly owned by three brothers does not automatically mean that the Insurer can restrict the complainant's claim to one third when the Insurance Policy is exclusively issued in the name of the Complainant.

Findings on the quantum of claim.

Additionally, an important aspect which requires consideration is that the Insurance Policy is in the name of the Complainant alone for a sum assured of Rs 72,00,000/- (Seventy Two Lacs Only) The insured house suffered damage in the fire incident. The Surveyor assessed the net loss at Rs.14,49,882/- (Fourteen Lacs Forty Nine Thousand Eight Hundred Twenty-Two) and after substandardisation of the assessed amount by 25%, he recommended amount of Rs10,87,366/- (Ten Lac Eighty Seven Thousand Three Hundred Sixty-Six)

We are not able to accept the reasoning given by the OP's Surveyor in absence of any specific contractual provision in the policy restricting the Complainant's indemnity to his fractional share in the property. Since the insurance contract was entered into by the OP1 with the Complainant as the Insured. Besides, the insurance policy itself does not reflect or does not

appear to have been issued in the joint names of all the co-shares nor has the OP1 established the same by any plausible and cogent evidence that the Complainants liability under the said policy was contractually confined to one third of the assessed loss.

The mere fact that the insured property is jointly owned by the Complainant and his brothers cannot by itself be treated as a ground for reducing the insurer's contracted liability to one third of the loss assessed by its own Surveyor. The recommendation to restrict payment to Rs.3,62,456/- appears to have been made by applying the Complainant's alleged proportionate share in the property rather than by reference to any specific limitation contained in the insurance policy.

Another significant circumstances which lends support to the Complainant's case is that the Complainant has availed a loan of Rs. 16,50,000/-(Sixteen Lac Fifty Thousand Only) from the concerned J&K Bank hereinafter referred to as OP2 for renovation of the house in question, and the said house was mortgaged with the Bank as security for loan. The loan as well as the mortgage admittedly stood in the name of the Complainant. Therefore, the aforesaid circumstances and facts cannot be brushed aside while determining the Complainant's interest in the insured property. The fact that the Bank accepted the said property as security for a substantial loan of Rs. 16,50,000/-(Sixteen Lac Fifty Thousand Only) availed by the Complainant as the security for renovation of house, clearly demonstrates that the Complainant had a legally recognizable interest in the property.

We also rely on the judgement passed by the Hon'ble J&K High Court Srinagar on 27-07-2012 in the case titled United India Insurance V/S Ab Rashid Bhat. Whereunder, the Hon'ble court has held that a person having a partial interest in property can insure the whole property and once the insurer accepts the premium for the entire property, it cannot restrict its liability merely because the other owners were not parties to the insurance contract.

In view of the above facts and circumstances, we are of the considered opinion that the Complainant is entitled to the admissible loss established at Rs. 10,87,366 /- (Ten Lac Eighty Seven Thousand Three Hundred Sixty-Six) of course subject to terms and conditions of the policy.

Therefore, the complaint is partly allowed and disposed of with the following directions:

1. The OP 1 is directed to pay the complainant an assessed amount of Rs.10,87,366/- (Ten Lac Eighty Seven Thousand Three Hundred Sixty-Six) for loss of his insured house along with the interest @ 6% from the date of institution of the complaint till the realization of the amount.
2. The OP1 shall not restrict the Complainant's entitlement to one third merely on the ground that the insured premises are jointly owned by the Complainant and his two brothers.
3. The OP 1 is further directed to pay an amount of Rs 2,00,000/- (Two Lacs Only) to the Complainant as compensation for causing unnecessary inconvenience and not settling the claim of the complainant
4. The OP1 is further directed to pay an amount of Rs. 20,000/- (Twenty Thousand Only) to the complainant as litigation charges.

Concluding observations

Keeping in view the admitted joint ownership of the insured property and in order to safeguard the rights and interests of all the co-owners of the insured house, the amount payable by the Insurance Company shall be deposited before this Commission and the Complainant shall be entitled to withdraw the said amount only upon the production of the NOC from the remaining co-owners (his brothers) or on production of a declaration from any competent authority regarding the respective entitlement. It is however clarified that the amount payable towards the loss of the jointly owned insured house shall not be construed as conferring exclusive proprietary rights entitlement upon the Complainant in respect of the entire insurance proceeds.

It is further clarified that this order shall not determine the inter-se proprietary rights and any dispute regarding such inter-se rights shall remain open to be determined by the Competent Court in accordance with law.

The OPs shall comply with the order within a period of 30 days from the date copy of this order is served upon them, failing which the entire awarded amount shall carry interest at the rate of 10% per annum from the date of order till its realization.

Order announced

Date:

Nyh
17/09/26
Nyla Yaseen
Member

Peerzada Bousar Hussain
17/9/26
Peerzada Bousar Hussain
President

Copy of the Order be provided to the parties for compliance and file be consigned to records after due completion.