

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-I,**U.T. CHANDIGARH**

Consumer Complaint No.	:	CC/830/2022
Date of Institution	:	28/09/2022
Date of Decision	:	03/01/2024

Amartex Industries Ltd., Plot No.365, Industrial Area, Phase-1, Panchkula, Haryana and also having its registered office at : #1846, Sector 34-D, Chandigarh 160022, through its Director – Mr. Shivam Grover.

... Complainant

V E R S U S

1. United India Insurance Company Ltd., having its Branch Office at SCO No.855, 1st Floor, NAC, Manimajra, Chandigarh-160101, UT, Chandigarh through its Branch Manager.
2. United India Insurance Company Ltd., having its Regional office at : SCO 123-124, Floor No.3, Sector 17B, Chandigarh 160017, through its Regional Manager.
3. Garg Insurance Consultancy Services, DSS, House No.88, Sector 12, Panchkula, Haryana.

... Opposite Parties

CORAM : **SHRI PAWANJIT SINGH** **PRESIDENT**
 MRS. SURJEET KAUR **MEMBER**
 SHRI SURESH KUMAR SARDANA **MEMBER**

ARGUED BY : Sh. Pulkit Sachdeva, Advocate for complainant
 : OPs ex-parte.

Per Pawanjit Singh, President

1. The present consumer complaint has been filed by Amartex Industries Ltd. through its Director, complainant against the aforesaid opposite parties (hereinafter referred to as the OPs). The brief facts of the case are as under :-
 - a. It transpires from the allegations as projected in the consumer complaint that the complainant company is running the business of manufacturing and sale of clothing, readymade garments, food chain division and is into the business of sale of general merchandise in retail. The complainant has various retail outlets across the states of Punjab, Haryana and Himachal Pradesh and in addition has also been running various outlets in the tricity region. OPs 1 & 2/insurer through its agent (OP-3) approached the complainant company offering to insure all the stocks at its 12 different outlets against fire and theft etc. insurance policy by projecting that the same would be comprehensive in nature and shall cover all incidents of losses due to fire, theft, burglary and shortage of stocks due to any reason whatsoever or loss to stocks or movable properties by fire etc. Being allured by the sweet talks and assurances of the OPs/insurer, complainant company agreed to get the stocks and other movables at its various outlets insured from the OPs against the risk of fire, theft and burglary. Accordingly, complainant purchased the Burglary Standard Policy (hereinafter referred to as “*subject policy*”) which was valid w.e.f. 6.3.2021 to 5.3.2022 (Annexure C-2) by paying premium of ₹2,25,942/- through cheque (Annexure C-1) out of which ₹2,77,469/- was towards fire policy and ₹8,474/- was towards policy of burglary, theft and shortage of stocks. On the asking of OP-3, complainant had

downloaded the copy of insurance policy from the website. On 5.3.2021, OP-3 had also sent the same burglary insurance policy to the complainant alongwith fire insurance policy through its email, which was also downloaded by the complainant and it was found that the same was valid w.e.f. 6.3.2021 to 5.3.2022 and the total insured value was ₹25,53,00,000/-. Alongwith the said policy, no other document was uploaded by the OPs with regard to the terms and conditions of the same. As per the subject policy, the entire stock and trade of the Mohali outlet of the complainant was insured with total value of ₹4,50,00,000/-. During the stock audit of the Mohali outlet store of the complainant on 27.5.2021, it came to the notice of the complainant that the stock of various items was stolen as the same was found to be short as per record and it was further found that the window pane (panel) inside the main gate of the outlet was found to be broken and the Manager of the complainant had immediately lodged complaint with the police on 27.5.2021 (Annexure C-3). Thereafter on 17.8.2021, there was another incident of missing of stock material noticed during audit and at that time window glass at the backside of the showroom was found broken. The complainant again reported the matter to police authorities immediately and filed a written complaint (Annexure C-4). OPs were also informed about the said incident vide letter dated 23.8.2021 (Annexure C-5) and it was also informed to the OPs that the estimated loss caused is of ₹22.00 lacs and all the relevant documents were submitted to the OPs. On 24.8.2021, matter was also reported by the complainant to the police authorities in pursuance to which FIR (Annexure C-6) under Section 380/457 IPC was registered. However, complainant was shocked when after about 8 months of filing of the complaint, OPs 1 & 2 company had repudiated the claim vide letter dated 6.5.2022 (Annexure C-9) on the ground that the surveyor has found that the claim was not covered as it was a case of theft and not burglary. Thereafter complainant applied under RTI Act for obtaining copies of relevant documents of the claim from the OPs and obtained the surveyor report (Annexure C-12) and came to know that the surveyor has wrongly recommended the case for repudiation of claim by misinterpreting the terms & conditions of the subject policy, though the same were never issued to the complainant. In this manner, the aforesaid act of the OPs 1 & 2/insurer in repudiating the claim of the complainant amounts to deficiency in service and unfair trade practice. OPs were requested several times to admit the claim, but, with no result. Hence, the present consumer complaint.

b. OPs did not turn up before this Commission, despite proper service, hence they were proceeded against ex-parte vide order dated 27.1.2023.

2. In order to prove its case, complainant has tendered/proved evidence by way of affidavit and supporting documents.

3. We have heard the learned counsel for the complainant and also gone through the file carefully, including the written arguments.

i. At the very outset, it may be observed that when it is an admitted case of the complainant that the complainant company had got its entire stock in its retail outlets at different places in Punjab, Haryana and Himachal Pradesh insured from OPs 1 & 2/insurer vide subject policy (Annexure C-2) i.e. Burglary Standard Policy which was valid w.e.f. 6.3.2021 to 5.3.2022 and during the currency of the subject policy, in the month of May 2021 and August, 2021, various items were found stolen from the Mohali outlet of the complainant regarding which firstly the complainant had given intimation to OP-1 about the said loss vide letter dated 23.8.2021 (Annexure C-5) and on the very next day also lodged FIR (Annexure C-6) with the police, which was registered under Section 457/380 of IPC at P.S. SAS Nagar, Phase I, and later on, on the report of the surveyor dated 22.3.2022 (Annexure C-12), the claim of the complainant was repudiated vide letter dated 6.5.2022 (Annexure C-9), the case is reduced to a narrow compass as it is to be determined if OPs 1 & 2/insurer are unjustified in repudiating the genuine claim of the complainant and the complainant is entitled to reliefs prayed for in the consumer complaint, as is the case of the complainant, or if the OPs are justified in repudiating the claim of the complainant.

ii. In the backdrop of the foregoing admitted case of the complainant, the documentary evidence led by the complainant, which is un rebutted by the OPs i.e. subject policy (Annexure C-2), surveyor report (Annexure C-12), FIR (Annexure C-6) and untraced report (Annexure C-13) and other relevant record, is required to be scanned carefully in order to determine the real controversy between the parties.

iii. Annexure C-2 is the copy of subject policy which clearly indicates that the same was "Burglary Standard Policy" valid w.e.f. 6.3.2021 to 5.3.2022 under which Mohali outlet of the complainant was also insured. Annexure C4 is copy of complaint which was lodged by the complainant with

the Police Station, Industrial Area-I, Mohali and in pursuance to which FIR (Annexure C-6) was registered under Sections 457/380 IPC. Annexure C-13 is the untraced report which clearly indicates that during investigation as the accused could not be arrested, the case was kept untraced. Annexure C-7 is the list of items stolen from Mohali outlet of the complainant regarding which matter was reported by the complainant to the police as well as OPs/insurer. Annexure C-8 is copies of photographs which clearly indicate that there is one hole on the wall of the Mohali outlet through which, as per the case of the complainant, the items were stolen.

iv. Annexure C-9 is the repudiation letter which indicates that the OPs/insurer have repudiated the claim of the complainant in pursuance to the surveyor report by concluding that as there were no signs of forceful entry at the site, it was not possible for the miscreants to gain entry and the relevant portion of the repudiation letter is reproduced below:-

“1. The letter dated 27.05.2021 submitted to Police, clearly states the theft had been happening over a period of time and up to date of letter, a major chunk of stock valuing approx. Rs. 16 Lacs had already been stolen from the store.

2. There were no signs of forceful entry visible at the site. It was not possible for miscreants to gain entry into the store room from ventilation window fixed at height of 9' from the floor and even window with size of only 4 to 6 inches.

3. It is a clear cut case of theft which was happening since long time and involvement of staff and security persons in perpetual shortage of items from the outlet cannot be ruled out.

4. There is no liability recommended in the claim as it is a claim of theft & which is not covered under the policy.

Based on the above facts, the subject claim file is closed as Repudiated. This decision is made as per policy wordings mentioned in General Exclusions no. II.”

- v. Annexure C-12 is the surveyor report which indicates that the surveyor, by visiting the spot, has concluded that the story disclosed by the complainant does not appear to be genuine as the ventilator window had iron grills fixed with an opening of 4 to 6 inch and even if the miscreants remove the glass of window, it was not possible to enter through the opening into store room. However, the surveyor has assessed the value of the stolen items as per the list as ₹14,89,935/- and by making deduction of 10% to the tune of ₹1,48,994/ on account of dead stock, assessed the total loss to the tune of ₹13,40,941/-.
- vi. From the aforesaid documentary evidence led by the complainant one thing is clear that the surveyor has formed his own opinion that it was not a case of burglary, rather it was a case of theft, which might have taken place in the Mohali outlet of the complainant with the connivance of the staff of the said outlet and the security person as it was not possible for a third person to enter inside the store from the ventilator window fixed at a height of 9' from floor and with opening of 4 to 6 inches. However, as it has come on record that the matter was reported by the complainant to the Police through complaint (Annexure C-4) in pursuance to which FIR (Annexure C-6) was registered under Sections 457/380 and it is clear from the photographs (Annexure C-8) that there is a big hole through which the entry of miscreants/accused cannot be ruled out and further when the matter was under investigation with the police who, by finding that employees on security duty namely Amandeep and Farooq were also interrogated and no clue of the accused persons could be traced and after making search at various places and interrogating various persons, submitted the untraced report by further concluding that in case any clue is got in future, the investigation of the case will be done, it appears that the surveyor has wrongly formed his opinion that it was a simple case of theft and not of burglary, especially when it has come on record that there was house breaking at the Mohali outlet of the complainant by the miscreants/accused persons who had thereafter committed burglary in the said outlet and more especially when the entire evidence led by the complainant is un rebutted by OPs 1 & 2/insurer.
- vii. In view of the foregoing, it is unsafe to hold that OPs 1 & 2 were justified in repudiating the claim of the complainant and the said act certainly amounts to deficiency in service on their part and the present

consumer complaint deserves to succeed.

viii. Now coming to the quantum of relief to be awarded to the complainant, since the surveyor, after scrutiny of the entire record of the complainant, had assessed the total loss to the extent of ₹13,40,941/- (after deducting 10% on account of dead stock), OPs 1 & 2/insurer are liable to pay the said amount to the complainant alongwith interest and compensation etc.

4. In the light of the aforesaid discussion, the present consumer complaint succeeds, the same is hereby partly allowed and OPs 1 & 2/insurer are directed as under :-

- i. to pay ₹13,40,941/- to the complainant alongwith interest @ 9% per annum from the date of repudiation of the claim i.e. 6.5.2022 onwards.
- ii. to pay ₹20,000/ to the complainant as compensation for causing mental agony and harassment;
- iii. to pay ₹10,000/- to the complainant as costs of litigation.

5. This order be complied with by OPs 1 & 2 within forty five days from the date of receipt of its certified copy, failing which, the payable amounts, mentioned at Sr.No.(i) & (ii) above, shall carry interest @ 12% per annum from the date of this order, till realization, apart from compliance of direction at Sr.No. (iii) above.

6. Since no deficiency in service or unfair trade practice has been proved against OP-3, the consumer complaint against it stands dismissed with no order as to costs.

7. Pending miscellaneous application(s), if any, also stands disposed of accordingly.

8. Certified copies of this order be sent to the parties free of charge. The file be consigned.

03/01/2024

hg

Sd/-

[Pawanjit Singh]

President

Sd/-

[Surjeet Kaur]

Member

Sd/-

[Suresh Kumar Sardana]

Member