

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 149 OF 2008

1. M/S. HOTEL LEELAVENURE LTD, MUMBAI
Registered Office at "The Leela Kempinski", Sahar,
MUMBAI-400059

.....Complainant(s)

Versus

1. NEW INDIA ASSURANCE CO. LTD. & ANR.
Regd. and Head Office: New India Assurance Building,
87, Mahatma Gandhi Road, Fort,
MUMBAI-400 001

2. THE NEW INDIA ASSURANCE COMPANY LIMITED
Through the Divisional Manager, Bombay Regional Office No.
2, Divisional Office No. 141 600 Jeevan Seva, 2nd Floor,
Swami Vivekanand Road, Santacruz (West)
MUMBAI 400 054
MAHARASHTRA

3. THE NEW INDIA ASSURANCE INDIA CO. LTD.
through The Divisional Manager Bombay Regional Office No.
2 Divisional Office No. 141600 Jeevan Seva, 2nd Floor, Swami
Vivekanand Road, Santacruz(West) Mumbai-400054

.....Opp.Party(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

FOR THE COMPLAINANT : MR. ABHIMANYU MAHAJAN, ADVOCATE
MS. ANUBHA GOEL, ADVOCATE
MR. MAYANK JOSHI, ADVOCATE AND
MS. SHAMBHAVI KALA, ADVOCATE

FOR THE OPP. PARTY : MR. VISHNU MEHRA, ADVOCATE
MR. KUNAAL MALHOTRA, ADVOCATE

Dated : 07 July 2023

ORDER

1. This consumer complaint under Section 21 (a) (i) of the Consumer Protection Act, 1986 (in short, 'the Act') is filed alleging deficiency in service and seeking compensation with interest in respect of loss suffered on account of repudiation of a claim under two insurance policies issued by the opposite parties.

2. The facts of the case, in brief, are that the Complainant, M/s Hotel Leelaventure Ltd., Mumbai (a Five-Star Deluxe Hotel), claimed an amount of Rs.5,98,42,267/- as compensation along with punitive damages and costs, etc. from the opposite party (insurer) for the losses and damaged suffered to the properties of the complainant which were insured by the Insurer

under two insurance policies for its buildings and items therein, due to unprecedented flash floods due to excessive rains and high tides in the sea in Mumbai on 26.07.2005 resulting in inundation/flooding of water into the premises of the Hotel thereby causing losses and damages to the insured buildings, plant & machinery and accessories, fixtures, fittings, furniture, etc. The complainant had intimated the incident of flood the same day, by letter dated 26.07.2005 followed by letter dated 11.08.2005, estimating loss of Rs. 4 crores. Complainant states that rain and sea water had flooded all the buildings by 6 inches to 2½ ft. in the building premises and up to ceiling in the basement. The Initial Report dated 13.09.2005 issued by Shri Adarsh K. Gupta, Surveyor for Adarsh Associates from New Delhi, after due inspection, investigation and verification of records estimated the loss at Rs.5 crores. A Claim Bill dated 03.07.2006 for Rs.6,91,93,420/- was sent by the Surveyor which was accepted and signed by opposite party no. 2. However, the Final Survey Report dated 12.07.2006 reduced the losses/damages to Rs.4,19,99,497/-. The Final Survey Report observed that the location of risk and description of risk when read together indicated that only damaged stock located within the insured premises i.e. Hotel Leela would be covered by the Fire Policy. Stock located at any other places including, Leela Galleria and its basements, cannot come within the scope of coverage as they fall outside the scope of the “insured premises”. It is alleged that the opposite parties (insurer) suppressed the Final Survey Report for 21 months and it was furnished to the complainant after repeated requests on 07.04.2008. The opposite parties meanwhile offered the complainant a ridiculously low compensation, fixed arbitrarily, unreasonably, unfairly and unjustly at Rs.37.57 lakhs on 26.12.2006, which was rejected by the complainant. The complainant avers that they paid premium of Rs.22 lakhs approximately and suffered a loss of about Rs.6 crores while the opposite party had offered a petty compensation of Rs.37.57 lakhs without assigning any reason, in violation of principles of natural justice. Alleging deficiency in service on the part of the insurance company and its officers in settlement of the claim of loss of the complainant, he is before this Commission with the following prayer:

- a) *That the records of “the insurer”, Opposite Party No. 1 (Govt. of India Undertaking) relating to this case be called for.*
- b) *That it be held that there are several instances of deficiency of service in the performance of “the insurer”.*
- c) *that “the Insurer”, Opposite Party No. 1 be directed to pay to the Complainant, compensation of Rs.5,98,42,267/- as estimated by the Surveyor, Sh. Atul C. Shah, appointed by the Complainant, meanwhile, interim Order u/s 13 (3B) for grant of Rs.5 Crores.*
- d) *That “the Insurer” be directed to pay to the Complainant, interest on the above said amount @ 15% p.a. from the date of the loss viz. 26.07.2005 till the date of the actual payment.*
- e) *That “the Insurer” be directed to pay to the Complainant an amount of Rs.50 lakhs towards punitive damages for harassment, mental agony, pain and sufferings and loss of business caused by “the Insurer” and its officers and for violation of several Regulations notified by IRDA and failure to settle the genuine Claim of the Complainant.*

(f) That "the Insurer" be directed to pay to the Complainant, cost of the Complaint and the litigation expenses quantified at Rs.10 lakhs.

(g) Any further relief, which this Hon'ble National Commission may consider appropriate on the facts and in the circumstances.

3. The complaint was resisted by way of written statement by the opposite party. Opposite party submitted that (i) the complaint was not maintainable as complainant did not fall within the definition of a 'Consumer' within the meaning of the Act since complainant / hotel runs for the sole purpose of earning profit and the complainant is required to approach a Civil Court by way of a civil suit rather than a Consumer Court; (ii) this present complaint could not be decided summarily as envisaged under the Act since it required recording of voluminous evidence, witnesses and perusal of large number of documents; (iii) the preliminary Survey Report dated 13.09.2005 assessing the loss at Rs.5 crores merely summarized the items of claim as furnished by the Insured at that stage and the claim was yet to be verified. On merits, it is submitted that the complainant wilfully suppressed the main issue in the matter regarding endorsement of the policy frivolously and on unfounded allegations and averments regarding the manner in which the Hon'ble Commission will proceed for which reason it deserved to be dismissed with exemplary cost.

4. Parties led their evidences way of affidavit and filed their written statements, rejoinder and written synopsis.

5. I have heard the learned counsel for both the parties and given thoughtful consideration to the material on record.

6. On behalf of the complainant it was argued that they are aggrieved by deficiency in service by O.P. No. 1 in wrongfully repudiating their claims under the two policies taken by them. The surveyor overlooked the coverage of the two policies and treated the articles covered under the second policy as those under the first policy and thereby concluded under-insurance. The surveyor failed to appreciate that the complainant runs a hotel and is not engaged in the business of selling machinery or furniture, fittings and fixtures (FFF) and, therefore, plant and machinery or FFF could not be covered by the first policy and could not be added in the value of the stocks to claim under-insurance. It is further argued that assessment of loss of Rs.37,57,230/- as assessed by the opposite party is grossly inadequate, irrational, unjustified and contrary to the policy. It amounts to deficiency in service through denial of the policy benefits to the complainant. The opposite party's contention that the complainant is not a 'Consumer' under Section 2(d) (i) of the Act is denied by the complainant on the basis of the fact that they are not in the business of selling or procuring insurance policies for profit. The insurance policies were taken not for the purposes of generating profit but only for indemnification of any loss that may be suffered by them. The insurer appointed a Surveyor to assess the loss who submitted Survey Report dated 13.09.2005 and a final Survey Report dated 26.07.2006. It is argued that the action of the opposite party no. 2 in offering a final settlement of claim for Rs.37.57 lakhs is by itself a deficiency in service. It is contended that the complainant is running a hotel and is engaged in hospitality sector, earning precious foreign exchange, promoting tourism and the insurer should undertake early settlement of the claim rather than delay the same under various pretexts. Accordingly, the complainant has filed the present complaint seeking recovery of

Rs.5,98,42,263/- along with interest, Rs.50 lakhs towards harassment and expenses and cost incurred in the present proceedings.

7. *Per contra*, the learned counsel for the opposite parties argued that there is no dispute about the cause of loss being accidental which falls within the purview of the policy. It is argued that the complainant had taken two separate fire policies, one for stocks and the second policy to cover building, plant and machinery of the hotel. Under this policy, risk location does not include the commercial complex, viz., Leela Galleria which is separately insured with Oriental Insurance Co. Ltd. It is submitted that the complainant had appointed Sh. Atul C Shah as its surveyor which was not in consonance with the provisions of the Insurance Act, 1938. The insured does not have the power to appoint another / second surveyor. Hence the alleged report of second surveyor is liable to be rejected.

8. It is manifest from the two insurance policies of the complainant obtained from the opposite party that they pertain to different risk, as below:

i. **Policy No. 141600/11/05/00019**

Sum assured Rs.8.50 crore / premium paid Rs.1,87,808/- coverage on stock and inventory et. Imported spares and other goods lying anywhere in the business premises.

‘Description of Risk’ : ‘HOTEL’:

On Stock of Food, meat, vegetables, dry stores, beverages, tobacco, wine & liquor, fish, poultry, dairy products, engineering stores, guest supply, cleaning supply, linen/fabrics, Uniforms, Crockery, cutlery, utensils, glassware, silverware, solid fuel, upholstery materials, LDO, cooking Gas, laundry supply, imported spare & other goods pertaining to our trade lying anywhere in the business premises including in cold storage located within the compound.

ii. **Policy No. 141600/11/05/00020**

Sum assured Rs.110 crores / premium paid Rs.20,48,849/- coverage on buildings, swimming pools, plant and machinery, electrical installations, FFF, interior decorations, cable, pipelines etc. while installed in main hotel, administrative building and / or in open compound within boundary wall etc.

‘Description of Risk’:

Plant & Machinery, tools, spares, dies electrical installation, furniture, fixtures, fittings, interior decoration, cables, pipe lines, firefighting equipment, lighting poles, compound wall, curios or work of art exceeding Rs.10,000/- manuscripts, plans, drawings, securities, obligations or documents of any kind stamps, paper money, cheques, books of accounts and other business books, computer system records [Incl. hardware & software] and others while installed or lying in main hotel building and/or laundry building and/or administrative building and/or in open compound but within the boundary wall, subject to detailed list provided by the insured.

9. The complainant contends that the Leela Galleria is in the basement of the Hotel and was, therefore, also covered under the policies. However, the opposite party contends that the policies did not cover any building other than the Hotel Building i.e. it did not cover the Commercial complex i.e. Leela Galleria. Stock located at any other place including the Leela Galleria and its basements do not fall within the scope of coverage as they are outside the scope of the “insured premises”. An endorsement was required to be issued by the insured i.e. New India Assurance Co. Ltd. to cover Leela Galleria. However, no such endorsement was issued by the opposite party. While complainant had sought amendment by way of endorsement, it has not been able to produce any documents including the policy issued by the opposite party with such an endorsement. Neither has any other document brought on record to suggest that the items covered in the Galleria were covered under the existing two policies obtained from the opposite party.

10. The fact that the items in the Galleria were covered under a specific policy for assets / stocks / FFF insured with the another insurance company i.e. Oriental Insurance Co. Ltd. indicates that this area and its contents were not covered under the existing two policies obtained for the purpose of fire, earthquake obtained from the opposite party. Therefore, the contention of the opposite party that Leela Galleria was not covered under the two policies as they fall outside the scope of the insured premises has some force and merits consideration. This position has not been countered by the complainant by way of any documentary evidence to suggest otherwise. Therefore, the contention of the complainant that the loss on account of the rain and flood in the premises of the Galleria should also be covered in the claim under the other two policies on the basis of the fact that it was the part of the hotel premises cannot be accepted. In case the Galleria had not been covered by any insurance would have been part of the premises which was covered for risks under the policies. The fact that there was a specific policy from Oriental Insurance Co. itself shows that the complainant intended to cover it for risk against the perils through a separate policy which obtained from the Oriental Insurance Co. This fact has also not been countered by it in the rejoinder. An insurance policy is a contract of insurance which has to be read as it is without any additions or other interpretations.

11. The complainant has claimed a loss of Rs.5,98,42,267/- on the basis of assessment done by the surveyor appointed by them namely Atul C. Shah. Under Section 64 UM sub section 3 of the Insurance Act, 1938, a surveyor appointed by an insurer is empowered to appoint an expert to assist in the finalization of the assessment of loss in an insurance claim. Section 64 UM (3) specifically provides that:

“The authority may at any time, in respect of any claim of the nature referred to in sub-section (2) call for an independent report from any other approved surveyor or loss assessor specified by it and such surveyor or loss assessor shall furnish such report to the authority within such time as may be specified by the authority or if no time limit has been specified by it within a reasonable time and the cost of, or incidental to such report shall be borne by the insurer.”

12. The report of the surveyor can be contested by the insured for valid reasons. The insurer is required to consider the report of the surveyor appointed by it although he is not bound to accept the report in entirety. However, assessment by his surveyor appointed by the insurer cannot be the basis of the finalization of claim.

13. Initially the assessment of loss by surveyor appointed for the purpose of assessment of loss was Rs.6,91,93,420/-. However, this assessment had included the loss incurred on the premises of Leela Galleria, which as per the final report of the final surveyor to have not been covered by way of endorsement under the insurance policies. For the reasons stated above, I find no reasons to disagree with the assessment of the final surveyor in this regard.

14. In view of the foregoing reasons, in the facts and circumstances of this case, the complaint is not found to have merits and is liable to be disallowed. The complaint is accordingly disallowed. All pending IAs, if any, stand disposed of with this order.

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**SUBHASH CHANDRA
PRESIDING MEMBER**