

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
BARAMULLA/BANDIPORA

Coram: -

1. Peerzada Qousar Hussian

..... President

2. Ms Nyla Yaseen

..... Member

Consumer Complainant No: 41/2016

1. Mohd. Maqbool Bhat
S/o A.R Bhat
R/o Usman Colony, Fatehpoura Khwaja bagh,
Baramulla
2. Shaheena
W/O Mohd. Maqbool Bhat
R/o Usman colony, Fatehpoura Khwaja bagh,
Baramulla



.....(Complainants)

Versus

National Insurance Company Ltd.
through its:-

1. Divisional Manager; Divisional Office,
Ex-change Road, Srinagar
2. Branch Manager; Branch Office , Bata Building
Iqbal Market, New Colony Sopore, Kashmir.

.....(Opposite parties)

Date of Institution: 27-03-2006

Date of Decision: 13-02-2024

Appearing Counsel:

Adv H.A Wani for the complainants

Adv F.D Bhat for the O.Ps.

ORDER

This complaint had been filed by the complainants before the Erstwhile State Consumer Protection Commission Jammu on 27-03-2006, under section 12 of consumer Protection Act 1986, wherein the complainants have alleged deficiency of service and unfair trade practice on part of the Opposite parties and inter alia prayed for direction to the O.Ps as under:-

1. To pay an amount of Rs. 6,30,000/- (Six lakh thirty thousand rupees only) to the complainants on account of losses/damages to the insured residential house of the complainants.

2. To pay an amount of Rs. 50,000/- (Fifty thousand rupees only) to the complainants for losses suffered on account of insured household goods.
3. To direct the O.Ps to pay 18% interest on the above quoted amounts to the complainants from the date of loss till the date of final payment and also direct the O.Ps to pay an amount of Rs. 50,000/- (Fifty thousand rupees only) for mental, physical and social agony caused to the complainants by adopting unfair trade practices in settlement of their claim.
4. To pay an amount of Rs. 30,000/- (Thirty thousand rupees only) as litigation charges to the complainants.

Brief facts of the case are as under :-

The complainants are the residents of Usman Colony, Fatehpura, Khwaja bagh Baramulla who hired the services of the O.Ps while insuring their residential building and other properties/goods under insurance policy No. 421004/11/05/3100000059 being valid from 21-04-2005 to 20-04-2006 for a total amount of Rs. 13 lakhs, out of which the residential building was insured for Rs.10,50,000, other household goods for Rs. 2,00,000 and the boundary wall was insured for Rs. 1 lakh, for which the O.ps charged an amount of Rs. 1048/- as premium which was paid by the complainants and received by the O.Ps under receipt No. 21/4/2005-421004/011/05/0000000172.

As averred by the complainants, the insured risks/perils which were granted by the O.Ps to the complainants besides other risks included the risk of earthquake.

That the said residential building was used by the complainants for their residential purposes besides the complainants had rented out 9 rooms of the said building to some tenants who were also residing in the same building.

The complainants have further averred that since the residential house of the complainants had suffered huge loss due to the earthquake which occurred on 08-10-2005 due to which the said house was rendered uninhabitable. However, they managed to search the household goods and other luggages in which the complainants had kept the important documents including the insurance documents and after tracing out the insurance documents, the complainants immediately submitted an application to the O.P through Development Officer namely Mushtaq Ahmed on 15-10-2005. However, the said Development Officer of the O.Ps advised the complainant No.1 to call on cell No. 9419032190 so as to verify about the surveyors to be deputed by the O.Ps for ascertaining the loss of the building. The complainants contacted the concerned Development Officer on the above mobile No., however, they were conveyed telephonically that since the surveyors were very busy at Uri and Tanghdar and accordingly advised the complainants to wait for some days and not to remove the debris of the damaged insured house but on the same day the Development Officer in question contacted the complainants telephonically and informed them that the surveyor has already visited the site of occurrence and has conducted his survey of the insured house. Thereafter, on his advice the debris of the damaged house were removed.

As averred by the complainants, the debris of the damaged house were removed on the advice of the Development Officer of the O.Ps., however they were asked to submit the below documents which were required for the settlement of their claim :-

1. Insurance policy certificate from Tehsildar.
2. Regarding the loss
3. Estimate of loss
4. Revenue extracts

That the complainants accordingly hired services of one Junior Engineer namely Mohd. Sadiq for preparation of the estimate of loss. However, the said Junior Engineer after inspecting the damaged house on spot prepared the estimate of loss caused due to the earthquake. Besides, the Revenue dept. and the R&B department, through their employees also visited on spot and took stock of the situation.

The complainants have further averred in the complaint that Mohd Maqbool Bhat visited the Office of the O.P.2 many times and requested about the surveyor to be deputed for conducting the survey so that the required documents as asked for by the concerned Development Officer are provided to him in support of the claim. However, he was asked to submit the said documents at the concerned office. The complainants obtained certificate from the Tehsildar and submitted the requisite documents to the O.Ps for settlement of their claim, consequent upon which the complainants were asked to put their signatures on Insurance claim Form for settlement of their claim.

That the complainants have further averred that they approached the O.Ps in the month of February, 2006 to enquire about the settlement of their claim but they were shocked when the O.Ps informed the complainants that earthquake is not covered under their insurance policy. Besides, they were informed that they have themselves demolished the residential house as reported by the surveyor of the O.Ps.

The complainants have further averred that they suffered huge loss due to the earthquake and non-settlement of their insurance claim by the O.Ps, subjected them to financial loss and mental agony which constrained the complainants to approach the Consumer Commission for redressal of their grievance.

Notices were issued to the O.Ps and upon service, the O.Ps filed their written version and contended that the complaint is not maintainable, as the risk of earthquake under the policy is not covered. Moreover, the property insured under the policy was otherwise in a dilapidated condition, being built up in the year 1964-65 and was being under the process of demolition as per the evidence collected. When the process of demolition of the building was going on, the tragedy of earthquake struck, which however did not affect the insured building as such the complainants lodged the claim with ulterior motive and mala fide intention and deserve outrightly dismissal. The O.Ps in their written version have further contended that the insured building was not at all affected by the earthquake as per the statements collected from the neighbours and the building was not being used for habitation. As per the on spot visit of the surveyor, the insured building was in a dilapidated condition as such the O.Ps repudiated the claim of the complainants as no claim on the basis of report of the surveyor. Pertinently, the report of the surveyor Wular investigators Pvt Ltd. placed on the record also reveals that the surveyor visited the locality only after

weeks' time on 16-10-2005 and the said surveyor in his report has mentioned that the building was in course of dismantling condition at the time of earthquake and the ground floor had no cracks etc. and the building was not affected by the earthquake, which occurred on 08-10-2005, consequently the claim of the complainants does not appear genuine.

The complainants subsequently adduced witnesses in support of their claim namely Abdul Hamid Ganai S/o Ghulam Nabi Ganai R/o Dongdaar, Kreeri, Mohd. Maqbool Dar S/o Abdul Jabbar Dar, Manzoor Ahmad Parray S/o Saif ud din Parray R/o Hail, Jageer, Baramulla and Mohd. Maqbool Bhat S/o Abdul Rahman Bhat R/o Usman colony Khwajabagh, Baramulla (complainant as witness in his own case). The witnesses were cross examined by the O.P's Counsel who deposed before the Commission that they know the complainants. As the complainants' house was located at khwajabagh Baramulla, wherein they were residing and the said house was not demolished by the complainants. One of the witnesses namely, Abdul Hamid Ganai S/o Ghulam Nabi Ganai R/o Dongdar, Kreeri, on cross examination deposed before the Commission that he was residing in the said house of the complainants as tenant and on the date of occurrence of the earthquake he was in the said insured house. The witness further deposed that his household goods, including television, was also damaged in the same house but he did not file any compliant with respect to his own loss as he had hired two rooms of first floor of the insured house on rent basis for which he had executed a rent deed with the complainants. However, after the occurrence of the earthquake, he immediately vacated the premises and shifted to some other area.

Mohd. Maqbool Bhat S/o Abdul Rahim Bhat, the complainant No.1, as witness in his own case, on cross examination deposed that he was residing in the insured house on the day of occurrence of earthquake i.e. 08-10-2005. He informed the insurance company (O.P) about the loss caused to the insured house, however, he did not know whether the surveyor had visited the site or not. The witness further deposed that on 18-10-2005, he started reconstruction and removing the debris of the house as he was informed by the O.Ps telephonically on 17-10-2005 to remove the debris. Besides, he was also informed that the survey has been conducted. The witness further deposed that he has not dismantled the first floor of the building prior to the occurrence of the earthquake. He has not reconstructed the house but a shed for residential purpose. He further deposed that he has not seen any investigator from the O.Ps. The first floor and atlik were collapsed due to earthquake. The witness has further deposed that he has received ex Gratia relief of Rs.30000/- from the govt.

Per contra, the O.Ps adduced witnesses in their defence namely Kulbushan Manchanda of M/S K.B. & Company, Trikuta Nagar Jammu, Tariq Ahmad Shah, Assistant Branch Manager of M/S Wullar investigators Pvt Ltd. Khanyar, Srinagar and M.A. Shah, Branch Manager of National Insurance Company, who were cross examined by the complainant's Counsel. Kulbushan Singh, witness adduced by the O.Ps, stated that It would have been a day before his visit to the subject property for survey, that he would have been deputed, however the witness further deposed that he has not mentioned the date of deputation in his report. Besides, the witness deposed that he spent half an hour on the spot, he met two labourers engaged by

the complainants but he didn't record any statement regarding the cause of loss during that time and did not enquire about the cause of the loss from the said labourers . The witness namely M A Shah, Branch Manager, National Insurance Company, on cross examination by the complainants' Counsel deposed that he was posted as Branch Manager Anantnag on the date of occurrence of the earthquake viz 8th October, 2005. The witness further deposed that he has no personal knowledge about the occurrence, the raising of claim and deputation of surveyors and also closure or settlement of the claim. Furthermore, the witness deposed that he doesn't know whether the company has verified the documents submitted by the complainants. Tariq Ahmad Shah, Assistant Branch Manager of M/S Wular investigor Pvt Ltd. Khaniyar Srinagar, in his report has stated that during the course of investigation, they contacted local people namely Kulwant Singh, Ghulam Mohd. Kirmani and Abdul Rashid Khan, who stated that the house of the complainants was already dismantled by the complainants and found that the claim of the complainants was not genuine. The witnesses also deposed that the O.P's company has not informed the complainants about the deputation of the investigator namely M/S Wular Investigator. Another surveyor K.B & Company in its report dated 14-11-2005, has mentioned that the loss is not maintainable as the building was in course of dismantling and the existing ground floor has no cracks etc. which implies that the building was not damaged by the tremor.

Heard the Ld Counsels appearing for the parties.

From the perusal of the records placed on file, it emerges that the complainants purchased an Insurance Policy from the O.P bearing Policy No. 421004/11/05/3100000059 which was effective from 21-04-2005 to 20-04-2006 for their residential house located at Usman Colony, Fatehpura, Khwaja bagh, Baramulla. The sum assured for the said residential house was Rs.13 lakhs for which an amount of Rs.1048/- was paid by the insured as premium. However, on 08-10-2005, an earthquake occurred due to which the house was damaged. The complainants approached the insurance company for registering the claim of insurance, however, on the advice of O.Ps, the complainants removed the debris. Thereafter, the surveyor turned up and prepared a report whereunder he mentioned that the insured house was already damaged which constrained the complainants to approach the Erstwhile Consumer Forum at Jammu. However, the O.Ps could not produce any cogent and plausible evidence in support of the claim that the building of the complainants was in a dilapidated condition prior to the occurrence of earthquake on 08-10-2005.

From the perusal of the statements of the witnesses adduced by the complainants and also the certificate issued by the Tehsildar concerned, it is crystal clear that the house in question was damaged due to the earthquake which occurred on 08-10-2005. It is not acceptable to assume that at the time of granting insurance of the residential house at the cost of Rs. 1048/- as premium, charged for evaluation of the building viz a viz its other household goods for getting the said building insured and thereafter when the incident happens the O.Ps cannot debunk their own statement and say that the building was so old and in dilapidated condition.

Therefore, relying upon the statements given by the witnesses and also the authenticity of the certificate issued by the Tehsildar concerned, we are of the

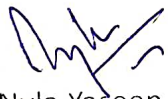
considered view that the O.Ps were under bounden duty to settle the claim of the complainants for the losses suffered due to the earthquake and the repudiation of claim amounts to unfair trade practice in accordance with Section 2 of Consumer Protection Act, 2019, the complainants are entitled to compensation.

In view of the above, the complaint of the complainants is allowed and disposed of with the following directions :-

1. The O.Ps are directed to pay an amount of Rs.6 lacs (Rupees Six Lacs only) to the complainants along with the interest @10% from the date of filing the complaint till its realisation within a period of 4 weeks as the compensation for the damages caused to their residential house due to the earthquake.
2. The O.Ps are further directed to pay an amount of Rs.50,000/-(Rupees Fifty Thousand only) to the complainants for causing mental, physical harassment and also for litigation charges within a period of 4 weeks.

Order announced

Date: 13-02-2024


Nyla Yaseen
Member
District Consumer Disputes
Redressal Commission
Baramulla
Type
Mir Shabnam


Peerzada Qousar Hussain
President
District Consumer Disputes
Redressal Commission
Baramulla

Copies of this Order be provided to the parties and file be consigned to records after due completion.