



**LANDOWNERS ARE ALSO  
CONSUMERS QUA THE BUILDERS:  
SUPREME COURT**

If you have questions or would like additional information on the material covered in this Newsletter, please contact the authors:

Alishan Naqvee, Partner  
([anaqvee@lexcounsel.in](mailto:anaqvee@lexcounsel.in))

Dhruv Manchanda, Associate  
([dmanchanda@lexcounsel.in](mailto:dmanchanda@lexcounsel.in))

Manasi Chatpalliwar, Associate  
([mchatpalliwar@lexcounsel.in](mailto:mchatpalliwar@lexcounsel.in))

**LANDOWNERS ARE ALSO CONSUMERS QUA THE BUILDERS: SUPREME COURT**

**I. Introduction**

The Supreme Court of India (“**Supreme Court**”) has recently laid down in *Bunga Daniel Babu v. M/s Sri Vasudeva Constructions*<sup>[1]</sup> (“**Case**”) that a land owner (“**Appellant**”) who entered into a Memorandum of Understanding (“**MoU**”) with a builder (“**Respondent**”) for development of his land by construction of a multi-story building, will be deemed to be a consumer within the definition of Section 2(1)(d) of the Consumer Protection Act, 1986 (“**CPA**”) despite the rider inserted by the amendment in 2002 thereto whereby the definition of consumer was amended to exclude from its purview any person who avails services for any commercial purpose.

**II. Background of the Case**

Under the MoU, the apartments constructed were to be shared in the proportion of 40% and 60% between the Appellant and the Respondent respectively, and construction of the building was to be completed within 19 (nineteen) months from the date of approval of the plans by the Municipal Corporation. In the case of non-completion, a rent of INR 2,000/- per month was to be paid by the Respondent to the Appellant. There were also other compliances to be carried out by the Respondent under the MoU which the Respondent failed to perform. Accordingly, the Appellant demanded certain sums as compensation towards the Respondent’s failure to abide by the terms of the MoU and upon

<sup>[1]</sup> Decided on July 22, 2016 in C.A No. 944 of 2016

LexCounsel, Law Offices C-10,  
Gulmohar Park New Delhi 110 049,  
INDIA. Tel.:+91.11.4166.2861  
Fax:+91.11.4166.2862

Recommended by:



repudiation of the legal notices sent by him in this regard, approached the District Forum with a consumer complaint alleging deficiency of service by the Respondent.

### III. Proceedings before the Consumer Forums

- a. The District Forum: The District Forum framed two essential issues upon receipt of the complaint:
- (i) Whether the Appellant was “consumer” within the definition of Section 2(1)(d) of the CPA;
  - (ii) Whether there was any deficiency in service on the part of the Respondent.

Relying on the legal principles laid down by the Supreme Court in *Faqir Chand Gulati v. Uppal Agencies Pvt. Ltd. & Anr.*<sup>[2]</sup> (“**Faqir Chand Case**”), the District Forum concluded that the Appellant was a consumer and that the agreement between the parties could not be termed as joint-venture for a commercial purpose.

The principles laid down in the Faqir Chand Case were *inter alia* as follows:

*“What then is the nature of the agreement between the appellant and the first respondent? Appellant is the owner of the land. He wants a new house, but is not able to construct a new house of himself either on account of paucity of funds or lack of expertise or resources, He, therefore, enters into an agreement with the builder. He asks the builder to construct a house and give it to him. He says that as he does not have the money to pay for the construction and will therefore permit the builder to construct and own additional floor/s as consideration. He also agrees to transfer an undivided share in the land corresponding to the additional floor/s which falls to the share of the builder...The basic underlying purpose of the agreement is the construction of a house or an apartment (ground floor) in accordance with the specifications, by the builder for the owner, the consideration for such construction being the transfer of undivided share in land to the builder and grant of permission to the builder to construct two floors. Such agreement whether called as a ‘collaboration agreement’ or a ‘joint-venture agreement’, is not however a ‘joint-venture’. There is a contract for construction of an apartment or house for the appellant, in accordance with the specifications and in terms of the contract. There is a consideration for such construction, flowing from the landowner to the builder (in the form sale of an undivided share in the land and permission to construct and own the upper floors). To adjust the value of the extent of land to be transferred, there is also payment of cash consideration by the builder. But the important aspect is the avilment of services of the builder by the land-owner for a house construction (construction of owner’s share of the building) for a consideration. To that extent, the land owner is a consumer, the builder is a service provider and if there is deficiency in service in regard to*

<sup>[2]</sup> (2008) 10 SCC 345

construction, the dispute raised by the land owner will be a consumer dispute. We may mention that it makes no difference for this purpose whether the collaboration agreement is for construction and delivery of one apartment or one floor to the owner or whether it is for construction and delivery of multiple apartments or more than one floor to the owner. The principle would be the same and the contract will be considered as one for house construction for consideration...

(Emphasis supplied)

- b. State Commission: The Respondents approached the State Commission in appeal, which opined that the claim of the Appellant could not be adjudicated under the CPA as the parties had entered into an agreement for two plots on which there was supposed to be construction and sharing of flats for the purposes of selling or renting them out to earn profit and therefore the agreement had the colour of a commercial purpose.
- c. National Commission: Aggrieved by the order of the State Commission, the Appellant approached the National Commission by way of revision petition. The National Commission, affirmed the decision of the State Commission and noted that as the Appellant had already sold some of the flats, the agreement was for a commercial purpose. The Appellant therefore appealed to the Supreme Court.

#### **IV. Meaning of Commercial Purpose**

In *Super Engineering Corporation v. Sanjay Vinayak Pant & Anr.*<sup>[3]</sup>, the National Commission observed that the intention behind the 2002 amendment to the CPA was to ensure that the protection of the CPA benefitted only those consumers who were buying goods and availing of services for personal use and not those who were doing the same for a commercial purpose or for any profit making activity.

It is significant to note that the terms “commercial purpose” and “profit making” have not been defined under the CPA and thus one needs to rely upon the courts’ interpretation of the same on a case to case basis. In fact, the National Commission had laid down in *Synco Textile Private Limited v. Greaves Cotton and Co. Ltd.*<sup>[4]</sup> that the term “for any commercial purpose” is wide enough to take in all cases where goods are purchased for being used in any activity directly intended to generate profit.” The Supreme Court has also laid down the test of close and direct nexus with the commercial activity for classification of a transaction as a “commercial purpose” in *Lakshmi Engineering Works v. PSG Industrial Institute*<sup>[5]</sup>.

<sup>[3]</sup> (1992) CPJ (1) 95 NC

<sup>[4]</sup> Firs Appeal No. 22 of 1989, decided on May 2, 1990.

<sup>[5]</sup> (1995) 3 SCC 583

In *Punjab University v. Unit Trust of India and Ors.*<sup>[6]</sup> the Supreme Court clarified that a person who buys or uses services exclusively for the purposes of earning his livelihood by means of self-employment is a consumer and such purchase of goods and services does not constitute use for a “commercial purpose”.

V. **Supreme Court’s Observations in the Case and Conclusion**

The Supreme Court concluded that the principles discussed in the Faqir Chand Case would apply even after the said amendment to the CPA and laid down the principle that commercial purpose is required to be interpreted considering the facts and circumstances of each case. The Supreme Court determined that the MoU entered into between the parties does not indicate that it is joint venture and therefore since the Appellant was neither a partner, nor a co-adventurer and did not have control over the construction, he was a consumer under the CPA. The Supreme Court has remanded the matter back to the State Commission for re-adjudicating the matter by treating the Appellant as a consumer.

**Endnotes**

- <sup>1</sup> Decided on July 22, 2016 in C.A No. 944 of 2016
- <sup>2</sup> (2008) 10 SCC 345
- <sup>3</sup> (1992) CPJ (1) 95 NC
- <sup>4</sup> First Appeal No. 22 of 1989, decided on May 2, 1990
- <sup>5</sup> (1995) 3 SCC 583
- <sup>6</sup> (2015) 2 SCC 669

**Feedback**

**Disclaimer:** LexCounsel provides this e-update on a complimentary basis solely for informational purposes. It is not intended to constitute, and should not be taken as, legal advice, or a communication intended to solicit or establish any attorney-client relationship between LexCounsel and the reader(s). LexCounsel shall not have any obligations or liabilities towards any acts or omission of any reader(s) consequent to any information contained in this e-newsletter. The readers are advised to consult competent professionals in their own judgment before acting on the basis of any information provided hereby.

---

<sup>[6]</sup> (2015) 2 SCC 669