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Himachal Pradesh State Consumer Disputes Redressal Commission Shimla.

First Appeal No. 237/2023

## 2. FA. No.242/2023 The Bajaj Allianz General Insurance

Consumer Protection Act, 1986 Section–2–Deficiency in Service– Housing loan and insurance–Claim repudiated–As per Complainant’s house was completely destroyed due to heavy rain and floods– Complaint allowed–Appeal–Held–That, the certificate issued by Pradhan, rapat Roj namcha and certificate issued by Tehsildar clearly indicates that damage has been caused to the house of the complainant–Negligence while sanctioning the loan and the securing the loan of complainant has no significance in presence of revenue record which clearly indicates that house was built on said khasra– No deficiency in service by the bank–Further held–Appeal of insurance is modified to the extent of interest @ 9% per annum (instead of 10.25%).

Parties represented by:

For the Appellants: Mr. Vishvinder Singh, Advocate vice Mr. K.B. Khajuria, Advocate in FA. No.237/2023 and Mr. Jagdish Thakur, Advocate in FA. No.242/2023.

For the Respondents: Mr. Ramesh Sharma, Advocate for R-No.1 and Mr. Jagdish Thakur, Advocate for R-2 in FA. No.237/2023 and Mr. Ramesh Sharma, Advocate for R-No.1 and Mr. Vishvinder Singh, Advocate vice Mr. K.B. Khajuria, Advocate for R-2&3 in FA. No.242/2023.

Justice Inder Singh Mehta, President

**O R D E R :-** The instant appeals are arising out of the common order dated 26.08.2023 passed by learned District Commission, Kangra at Dharamshala, H.P. in consumer complaint No.245/2022 titled Gagan Singh Versus The Bajaj Allianz General Insurance Co. Ltd. & others., whereby the complaint filed by the complainant was allowed.

Brief facts of the Case:

2. Briefly, case of the complainant is that the complainant availed house loan from the opposite party No.3/Bank for a sum of Rs.10,00,000/- for construction of his residential house over the land comprised in Khasra No. 787, Mohal-Sapeda, Up Tehsil Darini, District Kangra, HP., vide sanction letter dated 02.09.2017. The aforesaid land was mortgaged with the opposite party No.3/Bank. To secure the house loan of the complainant, the opposite parties No. 2 & 3/Bank insured the aforesaid building of the complainant with the opposite party 2025 M.D Kangra V/s Gagan Singh 131

No.1/insurance company vide insurance policy for a sum of Rs.17,50,000/- for a period of 10

years effective from 20.07.2020 till 19.07.2030. On 12.07.2021, due to heavy rain and flood, the building of the complainant destroyed completely. The complainant immediately informed the opposite parties and submitted all the documents in respect of the loss occurred. But the opposite party No.1/insurance company did not settle the claim of the complainant on the ground that no damage was caused to the building which was insured and mortgaged with the opposite party No.3/Bank, as such, claim of the complainant was closed by the insurance company as "No Claim". The aforesaid act on the part of the opposite parties amounts to deficiency in service and unfair trade practice. Hence, the present complaint.

3. The complaint of the complainant has been contested and resisted by the opposite parties by filing separate replies.

4. The opposite party No.1/insurance company filed reply and stated that as per the sanctioned loan, the complainant has got his one storeyed residential house insured with the opposite party No.1/insurance company under Standard Fire and Special Perils policy vide insurance policy No. OG-21-1211-030- 00000179. On receipt of intimation regarding damage caused to the house of the complainant, the surveyor of insurance company visited the complainant at Shahpur but could not visit the site for physical verification of the house as connected road washed away due to landslide in area. The surveyor submitted his final survey report dated 15.12.2021 and assessed the loss caused to the house to the tune of Rs. 12,81,836/-. However, on close scrutiny of the claim papers, it was found by the competent authority that building against which the loan has been granted by the concern bank, is still intact and safe and no damage has been observed to the insured building. Accordingly, the opposite party No.1/insurance company repudiated the claim of the complainant vide letter dated 06.01.2022. A prayer for dismissal of complaint was made.

5. The opposite parties No.2 & 3/Bank filed separate reply and stated that the loan amount was disbursed in favour of the complainant after attestation of mutation. The bank insured the building by deducting premium from the account of complainant and building was insured w.e.f. 20.07.2020 to 19.07.2030. The complainant submitted report of Panchayat Pradhan, copy of rapat rojnamcha of police station and report of patwari and thereafter, intimation alongwith said documents were supplied to the insurance company. The claim was to be settled by the insurance company after the completion of record and opposite parties No. 2 & 3 have nothing to do. The loan amount is yet to be recovered from the complainant and if the opposite party No.1/insurance company has to release the claim, the first right will be of the Bank. A prayer for dismissal of the complaint was dismissed.

6. The complainant has filed rejoinder denying the contents of the replies filed by opposite parties and reiterating those of complaint.

7. Thereafter, the parties led evidence in support of their respective pleadings.

8. After hearing the parties, learned District Commission below allowed the complaint of the complainant.

9. Feeling aggrieved by the order of learned District Commission, the opposite party No.1/insurance company and the opposite parties No.2 & 3/Bank filed these two separate

appeals.

10. Arguments heard on behalf of the parties and perused written arguments filed on behalf of the opposite parties No. 2 & 3/Bank as well as the record of the case file carefully.

11. Learned counsel of the appellants/Bank has submitted that he has filed written arguments and same be taken into consideration. He prays that appeal of the appellants/Bank be allowed.

12. Learned counsel of the appellant/insurance company has submitted that complainant took a loan from the Bank for his residential house. The said building/house of complainant was insured with the appellant/insurance company for a sum of Rs.17,50,000/- effective from 20.07.2020 to 19.07.2030. On 12.07.2021 due to heavy rain and flood, the building of complainant completely destroyed. Intimation was given to the bank as well as insurance company. He further submitted that on investigation, it was found that loss was not caused to the insured building, but the loss was caused to another building of complainant. As such, claim of the complainant was repudiated. He further submitted that perusal of photograph Annexure OP-11 clearly shows that insured building is not damaged due to heavy rain. He further submitted that learned District Commission below has wrongly come to the conclusion that building which was insured got damaged. He further submitted that impugned order is bad in law in granting interest on higher side i.e @ Rs.10.25% and the findings given by learned District Commission below in paras No. 11, 13 to 17 are also bad in law. He further submitted that in the present case, learned District Commission below appointed a Local Commissioner and report of local commissioner does not create confidence as both the parties were not present with the Local Commissioner at the spot and report was prepared at the instance of complainant. He prays that appeal of the appellant/insurance company be allowed.

13. On the other hand, learned counsel for respondent/complainant has submitted that report of Patwari Panchayat is prima-facie evidence that house in question was damaged due to rain on particular Khasra Number and ex gratia payment was also made to the complainant. He prays that appeal of the appellants/insurance company/Bank be dismissed.

14. In rebuttal, learned counsel of appellant/ insurance company has submitted that Patwari cannot say that it was the insured house which was damaged in rain. He prays that appeal be allowed.

## FINDINGS

15. The admitted fact which emerges on record is that the complainant availed house loan from the opposite party No.3/Bank for a sum of Rs.10,00,000/-

for construction of his residential house over the land comprised in Khasra No. 787, Mohal-Sapeda, Up Tehsil Darini, District Kangra, HP.

16. It is further an undisputed fact that to secure the house loan of the complainant, the opposite parties No. 2 & 3/Bank insured the aforesaid house/building of the complainant with the opposite party No.1/insurance company vide insurance policy for a sum of Rs.17,50,000/- for a period of 10 years effective from 20.07.2020 till 19.07.2030.

17. On 12.07.2021, due to heavy rain and flood, the house/building of the complainant destroyed completely. Intimation regarding the incident was given to the opposite party No.1/insurance company. The surveyor of the insurance company visited the spot, who assessed the loss to the tune of Rs.12,81,836/-.

18. The opposite party No.1/insurance company repudiated the claim of the complainant vide repudiation letter dated 06.01.2022 Annexure-OP-1/32 on the ground that the building against which the loan has been granted by concern bank is still intact and safe and no damage has been observed to that financed building.

19. The opposite party No.1/insurance company has placed on record the photographs of the spot and damaged house Annexure OP-1/11 to OP-1/15, but these photographs do not reveal that which house was insured and which was damaged. As such, the plea of the opposite party No.1/insurance company that insured house was not got damaged, does not seem to be correct and loses its significance.

20. Perusal of sanction letter issued by the Bank Annexure C-1 indicates that loan amount to the tune of Rs.10,00,000/- was sanctioned to the complainant over the land comprised in Khata No.136, Khatauni No.287, Khasra No.787, situated in Mohal Supeda, Sub Tehsil Darini, District Kangra, H.P.

21. Further, perusal of policy Annexure C-3 indicates that risk of location is VPO Boh, Sub Tehsil Darini, Tehsil Shahpur, District Kangra, H.P., where the house of the complainant was situated over Khasra No. 787 as per jamabandi, Annexure C-2 and same was damaged in the rain/flood.

22. The complainant has also placed on record certificate issued by

Pradhan, Gram Panchayat Harboh Annexure C-5, rapat Roj namcha Annexure C- 6, certificate issued by Naib Tehsildar, Sub Tehsil Darini, Distt. Kangra Annexure

C-8. Perusal of the said documents clearly indicates that damage has been caused to the house of the complainant situated in village Bhangar, Mohal Supeda, Mojja Boh, Sub Tehsil Darini, District Kangra, H.P.

23. Thus, in view of the above stated facts, it is crystal clear that house of the complainant was damaged due to rain and flood which is situated on Khasra No. 787, in Village Bhangar, Mohal Supeda, Mojja Boh, Sub Tehsil Darini, District Kangra, H.P. and that house was insured by the insurance company.

24. Learned District Commission below in para 17 of the impugned order has given findings that the Bank was negligent while sanctioning the loan and

securing the loan of the complainant with the insurance company, as the photographs taken by the bank while sanctioning the loan were not clicked properly.

25. The aforesaid finding given by learned District Commission below loses its significance in

presence of the revenue record placed on record by the complainant, perusal of which indicates that loan was sanctioned on the land comprised in Khasra No. 787 and the house of the complainant was also situated on said Khasra number. Moreover, the photographs have no bearing on dispute in question, in presence of revenue record which clearly indicates that house was built on Khasra No.787. In these circumstances, no deficiency in service can be attributed to the bank.

26. Perusal of impugned order indicates that learned District Commission below has granted interest @ 10.25% per annum on the award amount. However, no specific finding has been given by learned District Commission for granting interest at the higher side and as such impugned order to the extent of granting interest @ 10.25% is required to be modified.

27. In view of the above discussion, appeal of the appellant/Bank bearing No.237/2023 is allowed and impugned order passed against appellant/Bank is set aside.

28. The appeal of the appellant/insurance company bearing No.242/2023 is partly allowed and the impugned order dated 26.08.2023 passed by learned District Commission below is modified to the extent that opposite party No.1/insurance company is directed to pay a sum of Rs.12,81,836/- to the complainant alongwith interest @ 9% per annum (instead of 10.25%) from the date of complaint i.e. 30.04.2022 till its realization, alongwith compensation of Rs.50,000/- and litigation costs of Rs.20,000/-.

29. Parties are left to bear their own costs.

30. Certified copy of order be transmitted to parties and their counsel free of costs strictly as per rules. File of District Commission alongwith certificate copy of order be sent back and file of State Commission be consigned to record room after due completion forthwith. Certified copy of this order be also placed on the connected appeal. The appeals are disposed of. Pending application(s) if any also disposed of.