

Defective good in law

Law



INTRODUCTION WHAT ARE GOODS??? Goods have been defined in the Sale of Goods Act, 1930 as every kind of moveable property other than actionable claims and money; and include stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

The Consumer Protection Act, 1986 lays down that defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods. An average Indian consumer is noted for his patience and tolerance.

Perhaps because of these two traditional traits and due to the influence of the Mahabharata, the Ramayana and the Bhagavad Gita, he considers the receipt of defective goods and services as an act of fate or unfavourable planetary position in his horoscope. When a new television or refrigerator purchased by him turns out to be defective from day one, he takes it reticently, blaming it on his fate or as the consequence of the wrongs committed by him in his previous birth.

Very often he is exploited, put to avoidable inconveniences and suffers financial loss. It is rather paradoxical that the customer is advertised as the “king” by the seller and service provider, but in actual practice treated as a slave or servant. Goods are purchased by him along with the label “Items once sold by us will never be received back under any circumstances whatsoever. WHAT ARE DEFECTIVE GOODS???”

A product is in a defective condition, unreasonably dangerous to the user, when it has a propensity or tendency for causing physical harm beyond that which would be contemplated by the ordinary user, having ordinary knowledge of the product's characteristics commonly known to the foreseeable class of persons who would normally use the product. With regard to the issue of 'legal cause,' a defective condition is a legal cause of injury if it directly and in natural and continuous sequence produces or contributes substantially to producing such injury, so that it can reasonably be said that, except for the defective condition, the injury complained of would not have occurred. A defective condition may be a legal cause of damage even though it operates in combination with the act of another, some natural cause, or some other cause if such other cause occurs at the same time as the defective condition and if the defective condition contributes substantially to producing such damage. Thus, in cases involving allegedly defective, unreasonably dangerous products, the manufacturer may be liable even though you may find that it exercised all reasonable care in the design, manufacture and sale of the product in question.

On the other hand, any failure of a manufacturer of a product to adopt the most modern, or even a better safeguard, does not make the manufacturer legally liable to a person injured by that product. The manufacturer is not a guarantor that nobody will get hurt in using its product, and a product is not defective or unreasonably dangerous merely because it is possible to be injured while using it. There is no duty upon the manufacturer to produce a product that is 'accident-proof.' What the manufacturer is required to do is

to make a product which is free from defective and unreasonably dangerous conditions.

Any consumer who receives any defective goods can make a complaint. A consumer cannot make a complaint if the defective item. CASE STUDY: Mahender purchased one Britannia Good Day Biscuit packet and one Little Hearts biscuit packet at a ration shop. M/s Sri Raja Rajeshwari General & Stainless Steel Shop for Rs. 17/- and got the receipt for the same. He took the biscuit packet to his house and handed over the Little Hearts Biscuit packet to his younger son aged about seven years. After sometime his son started weeping. On questioning him he said that the biscuit packet had no biscuits in it.

Then Mahender himself checked and found that the sealed packets did not contain any biscuit. He filed a complaint in the District Forum. The manufacturer did nothing and denied the supply of the biscuit packets without biscuits but filled with air. Mahindra claimed damages and compensation of Rs. 60, 000/- on the ground that his son kept weeping for the whole night after seeing the empty biscuit packet. Further, the manufacturer, Britannia Company alleged that Mahindra colluded with the retail owner and filed the complaint to extract money.

Instead of accepting that some random defective pack came into the market and solve a simple matter like this, the manufacturer Britannia Company made false allegations that it was a concocted story. The District Forum held that it is an unfair trade practice to supply empty packs without biscuits. It directed them to pay Rs. 2, 000/- as compensation and Rs. 500/- as costs of

complaint to be paid within one month. ? DEFECTIVE PRODUCTS Defective products may cause injuries even serious injuries to an individual. In fact, it is the cause of thousands of injuries every year.

This may be due to the manufacturers or to the corporations who design and sell the products but do not consider the well-being of the consumers. These manufacturers are more of profit than safety of the products. Thus, it put buyers to risk and danger. When you are injured or harm in any way by a faulty product, you should seek a defective product injury lawyers who could help you to make the negligent party liable for producing unsafe products.

These are the products that consumers buy which usually has defects:

Brakes Tires Airbags Restraint system such as seat belts Firearms Farm equipment Helmet Prosthetics Pharmaceuticals

Products and Strict Liability Product Liability law in India LIABILITY FOR MANUFACTURING OR DISTRIBUTING A DEFECTIVE PRODUCT IN INDIA In India, Product liability law, also called “ products liability”, governs the liability of manufacturers, wholesalers, distributors, and vendors for injury to a person or property caused by dangerous or defective products. The goal of product liability laws is to help protect consumers from dangerous or defective products, while holding manufacturers, distributors, and retailers responsible for putting into the market place products that they knew or should have known were dangerous or defective.

Under the law, a victim has three grounds on which a defective product claim may be based and liability of the manufacturer may be established in the case: 1. Marketing defects - it is very important that a product includes

warnings. Warnings should tell consumers about the dangers of the product, including instructions on how to use it. Marketing defect are those products without warnings or with improper warnings about the products possible threats. 2. Manufacturing Defects- these include defects that occurred when manufacturing the product or during the process of making it. . Design defects- a flaw or defect to the product that were not detected during the design process. This defect is inherent and exists even before the product is made. Meanwhile, strict liability does not rely on the level of carefulness. It is not important whether the manufacturer exercise great care. As long as the product they produced or sold is defective and caused harm to a person, they will be held automatically liable. Also, strict liability allows a person who was injured by a defective product, to obtain compensation from the manufacturer or seller of the product.

Even if the other party is negligent, you can still get remuneration for damages. This is because manufacturer, seller or retailer has a responsibility for any product they produce. Civil Product liability in India is, essentially, governed by: a) The Consumer Protection Act, 1986 b) The Sales of Goods Act, 1930 c) The Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the “ MRTP Act”) d) The law of Torts. e) special statutes pertaining to specific goods. CASE STUDY: In a Pair, one Shoe is longer than the other Anand Raj had purchased a pair of shoes from M/s. Metro Shoes Ltd. for Rs. 2, 190/-. After one day's use he was shocked to find that the shoes were defective as one of them was longer than the other. He rushed to the shop for an exchange. That was denied to him, but they offered to rectify the defect. M/s Metro Shoes Ltd. tried to rectify the same

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but Anand Raj found it uncomfortable to wear even after repairs. Complaint was filed in the District Forum. Metro Shoes denied their liability and argued that the cash memo given to the purchaser reads as 'Exchange within 15 days for unused pair with price tag intact'.

It was not that the shoes were used extensively as they were brought to the shop immediately. During the proceedings in the District forum, Metro Shoes Limited agreed to replace the said pair of shoes but all the same Anand Raj was put to inconvenience and forced to take matter to a consumer forum. The District Forum held Metro Shoes Ltd. deficient in service for selling a defective product and directed them to pay Rs. 2, 190/- after receiving the said pair of shoes from Anand Raj along with a compensation of Rs. 1000 and Rs. 500 as costs. Anand Raj. B. v. M/s Metro Shoes Ltd. , C.

C. No. 261 of 2008, decided on 9-6-2008. What are the reliefs available to consumers? Consumer courts may grant one or more of the following reliefs:-
A) Repair of defective goods. B) Replacement of defective goods. C) Refund of price paid for the defective goods or service. D) Removal of deficiency in service. E) Refund of extra money charge. F) Withdrawal of goods hazardous to life and safety. G) Compensation for the loss or injury suffered by the consumer due to negligence of the opposite party. H) Adequate cost of filing and pursuing the complaint. I) Grant of punitive damages.

What Is The Legislation That Ensures All These Rights? It is the Consumer Protection Act, 1986. The act seeks to promote and protects the interest of consumers against deficiencies and defects in goods or services. It also seeks to secure the rights of a consumer against unfair or restrictive trade

practices, which may be practiced by manufacturers and traders. There are various levels of adjudicatory authorities that are set up under the Act, which provide a forum for consumers to seek redressal of their grievances in an effective and simple manner. When can I approach a consumer court?

You can approach the consumer guidance society and consumer court if the goods you have purchased have any defect in quality quantity, purity or standard. You may also do so if the service you have paid for has any fault, shortcoming or inadequacy. In the quality, nature and manner of performance. The list of services is long, including the nature of transport, telephones, electricity construction, banking, insurance, medical treatment, etc. By and large, services of Professionals such as doctors, engineers, architects, lawyers, etc come under the purview of consumer courts. What happens if I have bought the goods on installments?

Even if you have partly paid for an item or service or under any method of deferred payment you can file a complaint if it is defective or deficient. Can I file a complaint in case the good is purchased for a commercial purpose? No. If the purchase of goods (or service) is for commercial or resale purpose, you cannot file a complaint in the consumer courts. You have to approach the civil court. There is an exception though. If you are a self-employed person and the product (or service) is exclusively for the purpose of earning your livelihood, you may approach the consumer court.

Is there a time limit to filing a complaint? Yes. The complaint is to be filed within two years from the date on which cause of action has arisen unless it can be proved that there was a good enough reason for filing a complaint

after the lapse of two years. CASE STUDY Imported Magnetic Bed - Defective and Ineffective Lakshmana Reddy purchased a magnetic bed for Rs. 1, 48, 500/- from the Frontier Trading. This was an imported bed from Japan, which was called 'Japan Life Total Sleeping System'. It was supposed to help in ailments including polio, paralysis etc.

Literature regarding this magnetic bed and leaflets were shown to Lakshmana Reddy by their agents who pursued him continuously for purchasing it. Lakshmana Reddy was a polio-paralytic patient and after taking intensive medical treatment and physiotherapy exercises he completely recovered with regard to his right leg and to some extent with regard to his left leg within a period of two years and started walking by using caliper on his left leg and with the help of hand stick. In 2000, he purchased the Japan Life Sleeping System. He did not get any relief; in fact, he started having giddiness.

It did not make any improvement in the left lower limb muscle and the experts informed him that it was unlikely to improve in future. He had no improvement in his health after purchasing and using the magnetic bed. Case was registered against the agent in the police station and the Commissioner of police also inquired about cheating by the agents. It was also published in the newspapers that this agent has been cheating not only Lakshmana Reddy but many others. The District Forum held that it was deficiency in service on the part of the agent and the rest and made them jointly and severally liable to pay a sum of Rs. , 48, 500/- along with interest at 12% p. a. from 01. 04. 2000 till the date of payment with compensation of Rs. 10, 000/- and Rs. 1, 000/- as costs. WHO CAN FILE A COMPLAINT? •A consumer <https://assignbuster.com/defective-good-in-law/>

•Any voluntary consumer organization registered under the Societies Registration Act, 1860 or under the Companies Act, 1956 or under any other law for the time being in force •The Central Government •The State Government or Union Territory Administrations •One or more consumers on behalf of numerous consumers, having the same interest (Class action complaints) WHERE TO FILE A COMPLAINT: If the cost of goods or services and compensation asked for is up to Rs five lakh, then the complaint can be filed in the District Forum located at Pushpa Heights, Pune Satara Highway, Bhiwandi corner. •If the cost of goods or services and compensation asked for is more than Rs five lakh, but less than Rs 20 lakh then the complaint can be filed before the State Commission notified by the State Government or Union Territory concerned •If the cost of goods or services and compensation asked for exceeds Rs 20 lakh then the complaint can be filed before the National Commission at New Delhi.

FILING PROCEDURE PROCEDURE FOR FILING COMPLAINT: A complaint can be filed by a complainant against the seller, manufacturer, or dealer of goods which are defective or against the provider of services, if they are deficient in any manner whatsoever. An unfair trade practice or restrictive trade practice can also invite complaint. A complaint can be a:- (a) Consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided; (b) A firm registered or unregistered (c) An individual (d) Hindu Undivided Family. e) A cooperative society or any other association of persons (f) The Central or the State Government; and (g) in case of death of a consumer his legal heirs or representatives Along with the complaint, the complainant is required to file

copies of supporting documents, i. e. , cash memo, receipts, agreements, etc. The complainant is required to file 3 copies of the complaint, together with enclosures, for official purpose plus copies for the number of Opposite Parties. The complaint should be filed along with fee in the form of Postal Order/ Demand Draft according to the amount of compensation claimed.

JURISDICTION FOR FILING COMPLAINTS In terms of the provisions contained in the Consumer Protection Act, 1986, complaints:- 1. Where the value of goods or services and compensation, if any, claimed below Rs. Twenty Lacs or upto Rs. Twenty Lacs, can be filed before State Commission. 1. Where the value of goods or services and compensation, if any, claimed exceeds Rs. Twenty Lacs but does not exceed Rs. One crore, can be filed before State Commission. The complaints can be filed at the Filing Counter of the State Commission on every working day from 10. 30 a. m. to 1. 30 p. m.