

# BANK OMBUDSMAN SCHEME

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- The Banking Ombudsman Scheme introduced by RBI in 1995 aims at fulfilling the expectations gap of the customers that they have vis-à-vis the services provided to them by the banking sector.
- The scheme was refined and revised in 2006 and amended in February 2009 to expand its scope to cover internet banking and credit card operations and June 2017 to expand scope to mobile banking and electronic banking.
- The word 'Ombudsman' in general means a **public official who is appointed to investigate the citizen complaints against the administration.**
- In India, any person whose grievance against a bank is not resolved to his satisfaction by that bank within a period of **30 days**, he can approach the Banking Ombudsman, provided the subject matter of the complaint is covered under the scheme.
- It covers all commercial banks, regional rural banks and schedule primary co-op banks.

**The scheme has been developed by the RBI under powers conferred upon it by **Sec 35-A of Banking Regulation Act-1949****

Number of banking ombudsman is 22.

## **BROAD AREAS COVERED UNDER THE SCHEME:**

- a) Deficiency in **banking service**
- b) **Non observance of RBI directives on loans and advances** in the matters of interest rates, delay in sanction or non-observance of prescribed time schedule for disposal of loan applications
- c) **Deficiency pertaining to internet banking,**
- d) Credit card operations, incident wrong billing etc.

**SUSPENSION OF THE SCHEME** :The Reserve Bank, if it is satisfied that it is expedient so to do, may by order Suspend for such period as may be specified in the order, the operation of all or any of the provisions of the Scheme, either generally or in relation to any specified bank.

**APPOINTMENT & TENURE:** The Reserve Bank may appoint one or more of its officers in the rank of Chief General Manager or General Manager to be known as Banking Ombudsman to carry out the functions entrusted to them by or under the Scheme. Their

appointment shall be for a period not exceeding three years at a time.

### **GROUND OF COMPLAINT**

Any person may file a complaint with the Banking Ombudsman having jurisdiction on any one of the following grounds alleging deficiency in banking including internet banking or other services

- a) Non-payment or inordinate delay in the payment or collection of cheques, drafts, bills etc.;
- b) Non-acceptance, without sufficient cause, **small denomination notes** tendered for any purpose, and for charging of commission in respect hereof;
- c) Non-acceptance, without sufficient cause, of coins tendered and for charging of commission in respect thereof;
- d) Non-payment or delay in payment of **inward remittances**
- e) Failure to issue or delay in issuing efforts, pay orders of bankers' cheques;
- f) Non-adherence to prescribed working hours:
- g) Failure to provide or delay in providing a banking facility (other than loans and advances) promised in writing by a bank or its direct selling agents
- h) Delays, non-credit proceeds to parties accounts, non-payment of deposit or non-observance of the Reserve Bank directives, If any, applicable to rate of interest on deposits in any savings, current or other account maintained with a bank:
- i) Complaints from **Non-Resident Indians** having accounts in India in relation to their remittances from abroad, deposits and other bank related matters;
- j) Refusal to open deposit accounts without any valid reason for refusal:
- k) **Levy of charges** without adequate prior notice to the customer
- l) Non-adherence by the bank or its subsidiaries to the instructions of Reserve Bank on ATM/Debit card operations or credit card operations:
- m) Non-disbursement or delay in disbursement of pension (to the extent the grievance can be attributed to the action on the part of the bank concerned, but not with regard to its employees):
- n) Refusal to accept or delay in accepting payment towards taxes, as required by Reserve Bank/Government:
- o) Refusal to issue or delay in issuing, or failure to service or delay in servicing or redemption of Government securities

- p) Forced closure of deposit accounts without due notice or without sufficient reason;
- q) Refusal to close or delay in closing the accounts;
- r) Non-adherence to the fair practices code as adopted by the bank
- s) Non-adherence to the provisions of the Code of Bank's Commitments to Customers issued by Banking Codes and Standards Board of India and as adopted by the bank
- t) Non-observance of RBI guidelines on engagement of recovery agents by banks, and
- u) Any other matter relating to the violation of the directions issued by the RBI in relation to banking or other services

2) A complaint on any one of the following grounds alleging deficiency in banking service in respect of loans and advances may be filed with the Banking:

- a) Non-observance of RBI Directives on interest rates,
- b) Delay in sanction, disbursement or non-observance of prescribed time schedule for disposal of loan applications
- c) Non-acceptance of application for loans without furnishing valid reasons to the applicant and
- d) Non-adherence to the provisions of the fair practices code for lenders as adopted by the bank or Code of Bank's Commitment to Customers, as the case may be**
- e) Non-observance of Reserve Bank guidelines on engagement of recovery agents by banks, and
- f) Non-observance of any other direction or instruction of the Reserve Bank's may be specified by the Reserve Bank for this purpose from time to time.

#### **PROCEDURE FOR FILING COMPLAINT:**

**Who can file a complaint:** Any person who has a grievance against a bank on any one or more of the grounds mentioned above, may himself or through his authorized representative (other than an advocate), make a complaint to the Banking Ombudsman.

#### **Where to file complaint**

- To that office of the Ombudsman Within whose jurisdiction the **branch or office of the bank** complained against is located.
- However, a complaint arising out of the operations of credit cards and other types of services with centralized operations, shall be filed before the Banking Ombudsman within whose territorial jurisdiction the billing address of the customer is located

### When can complaint be filed

- The complainant before making a complaint to the Banking Ombudsman, has to make a written representation to the bank and has to wait for banks reply, up to a period of maximum one month.
- If the bank rejects the complaint or the complainant does not received any reply within a period of one month after the bank received his representation or the complainant is not satisfied with the reply given to him by the bank, he can file complaint with the Ombudsman.

### Time limit for complaint

The complaint should be made not later than one year after the complainant has received the reply from the bank or, where no reply is received, other than one year and one month after the date of the representation to the bank

### How to make a complaint

The complaint has to be made in writing by the complainant or his authorized representative (but not through an advocate) and should be, as far as possible, in the form specified by the Ombudsman, It should be duly signed by the complainant.

#### **The complaint should contain the following particulars:**

- Name and the address of the **complainant**,
- Name and address the branch or office of the bank against which the complaint is made,
- Full facts giving rise to the complaint,
- Nature and extent of the loss suffered by the complainant, and the relief sought for.
- The complainant shall file along with the complaint, copies of the documents, if any, which he proposes to, rely upon and a declaration that the complaint is maintainable under the scheme.
- A complaint/made through **electronic means** shall also be accepted by the Banking Ombudsman,

### When can complaint be rejected



- When the complaint is in respect of the **same cause of action** which was settled or dealt with on merits by the Banking Ombudsman in any previous proceedings whether or not received from the same complainant or along with one or more complainants or one or more of the parties concerned with the cause of action;
- The complaint pertains to the same cause of action, for which any proceedings before any court, tribunal or arbitrator or any other forum are pending or a decree or Award has been passed by any such court, tribunal, or arbitrator,
- The complaint is of frivolous or vexatious nature, and
- The complaint is made after the expiry of the period of limitation prescribed under the Indian Limitation Act, 1963.

### **POWER TO CALL FOR-INFORMATION**

- The Ombudsman has the powers to call for any information from any bank, which it deems fit to resolve any dispute presented before it or which is considered necessary by the Ombudsman to properly understand the complaint put before it. **It is mandatory for the banks to comply with such directives issued by the Ombudsman**
- If the bank fails to submit the required information or document, the Ombudsman may presume that the information sought is not in favour of the bank.
- However, the Ombudsman shall maintain the confidentiality of the information received in any manner and shall not disclose such information or document to any person except with the consent of the person furnishing such information

### **SETTLEMENT OF COMPLAINT BY AGREEMENT**

- It is the endeavor of the Ombudsman to promote a settlement of the complaint by agreement between the complainant and the bank through conciliation or mediation
- The Banking Ombudsman is free to follow any such procedure as he may consider just and proper for promoting a settlement of the complaint.

- He shall not be bound by any rules of evidence in dealing with a complaint. The proceedings before the Banking Ombudsman shall be summary in nature.

### **AWARD BY THE BANKING OMBUDSMAN:**

1) If a complaint is not settled by agreement within a period of one month from the date of receipt of the complaint or such further period as may be allowed to the parties, the Ombudsman may, after affording the parties a reasonable opportunity to present their case, pass an Award or reject the complaint.

2) The Banking Ombudsman shall consider the following in resolving a complaint:

- The evidence placed before him by the parties,
- The principles of banking law and practice,
- Directions and guidelines issued by the Reserve Bank from time to time and,

3) **The award shall state briefly the reasons for passing the award.**

4) The Award shall contain the directions, if any, to the bank for specific performance of its obligations and in addition to or otherwise, **the amount**, if any, to be paid by the bank to the complainant by way of compensation for any loss suffered by the complainant, arising directly out of the act or omission of the bank. A copy of the Award shall be sent to the complainant and the bank.

### **AMOUNT OF AWARD**

- The Ombudsman can pass an award directing payment of an amount which is not more than the actual loss suffered by the complainant as a direct consequence of the act of omission or commission with maximum up to **Rs. Twenty lakhs**.
- For complaints arising out of credit card operations, compensation not exceeding Rs 1 lakh can be awarded.

### **AFTER THE AWARD:**

- **After receiving the award, the complainant** has the option to either accept or reject the award.
- **He accepts the award, he will have to intimate the concerned bank in writing within 30 days of receipt of the award about accepting the award towards full and final settlement of the complaint.**
- Failure to do so will cause lapse of the award

- On receiving acceptance letter from the complaint, the bank will have to comply with the award within 1 month of its receipt and advises the ombudsman accordingly.

**APPEAL BEFORE THE APPELLATE AUTHORITY (Deputy Governor, RBI):**

- Any person aggrieved by an Award or by rejection of a complaint, may within 30 days of the date of receipt of communication of Award or rejection of complaint, prefer an appeal before the Appellate Authority.
- The Appellate Authority, if satisfied that the applicant had sufficient cause for not making the appeal within time, may allow a further period not exceeding 30 days
- **If appeal is made by bank**, the period of thirty days for filing an appeal shall commence from the date on which the bank receives letter acceptance of Award by complainant.
- **Provided further that appeal may be filed by a bank** only with the previous sanction of the Chairman or, in his absence, the Managing Director or the Executive Director or the Chief Executive Officer any other officer of equal rank.

**ACTION BY THE APPELLATE AUTHORITY:** The Appellate Authority, after hearing both the parties, may:

- a) Dismiss the appeal: or
- b) Allow the appeal and set aside the Award, or
- c) Remand the matter to the Banking Ombudsman for fresh disposal in accordance with such directions as the Appellate Authority may consider necessary or proper, or
- d) Modify the Award and pass such directions as may be necessary to give effect to the Award so modified or
- e) Pass any other order as it may deem fit.

**THE OMBUDSMAN SCHEME FOR NBFCs**

- With a view to providing customers of Non-Banking Finance Companies (NBFCs) with a cost-free and expeditious grievance redress mechanism, RBI has introduced an Ombudsman Scheme for NBFCs. The scheme will cover all

deposit taking NBFCs and those with customer Interface having asset-size of Rs. 100 cr.

- RBI can appoint one or more of its officers in the rank of not less than General Manager as Ombudsman.
- Appointment of Ombudsman will be for a period not exceeding three years at a time.

## CONSUMER PROTECTION ACT (CPA)

The Consumer Protection Act, 1986, popularly known as “COPRA” has been enacted with the following primary objectives:

- a) To provide very **simple, quick and easy** remedy to consumers under the three-tier quasi-judicial redressal machinery established under the Act.
- b) To protect the consumer's interests against **unscrupulous traders and businessman**.

COPRA is simplified, minimal technical and legalistic procedures, providing access to easier redressal systems and ‘people friendly courts with a majority of non-legal background members

### COPRA ENACTMENT:

COPRA came into effect w.e.f 15 April 1987 and is applicable to public sector, private sector and cooperative sector all over India.

**A comprehensive amendment in the shape of The Consumer Protection (Amendment Act) 2019 has been passed.**

### WHO CAN FILE A COMPLAINT?

*A complaint under this Act can be made by*

- a) Any consumer; or
- b) Any voluntary consumer association; or
- c) The Central Government or any State Government or
- d) Any one or more consumers where there are numerous consumers having the same interest, i.e. they should have a common cause of action

### WHO IS A CONSUMER



Under COPRA a 'Consumer' is a person who buys any goods or hires any service for **consideration**.

However, **goods obtained for commercial purposes 'or for the resale are not covered under the Act. All type of online and offline transactions are covered.**

**Customers of the banks are also covered under COPRA as they are consumer of banks services.**

## **GROUNDS FOR COMPLAINT**

Under this Act, a complaint may be made by the complainant in writing with a view to obtain any relief provided by law under this Act alleging that

- a) An **unfair trade practice or restrictive trade practice** has been adopted by any trader,
- b) The **goods bought by him or agreed to be bought by him suffer from one or more defects,**
- c) The **services hired or availed of, or agreed to be hired or availed of by him suffer from deficiency in any respect,**
- d) The trader has charged for the goods mentioned in the complaint a price in **excess of the price fixed by or under any law for the time being in force** or displayed on the goods or any package containing such goods.
- e) **Goods which will be hazardous to life and safety when used,** are being offered for sale to the public in contravention of the provisions of any law for the time being in force, requiring traders to display information in regard to the contents, manner and effect of use of such goods.

## **HIERARCHY OF COURTS:**

The Act has established a hierarchy of courts, with

- a) At least one **District Forum** at the District level,
- b) A **State Commission** at the State Capitals and
- c) The **National Commission** at New Delhi.

The Forum / Commission, in which the complaint is required to be filed, depend upon the value of goods/services complained against and the compensation, if any, claimed and is as under

Old Limits	FORUM/COMMISSION IN WHICH COMPLAINT IS REQUIRED TO BE FILLED	New Limits
Up to Rs 20 lakhs	The District Forum - Head is President equivalent in status to District and Session judge.	Up to Rs 1 crore
Exceeding Rs. 20 lakhs but not exceeding Rs. 1 crore	The State Commission Head is President equivalent in status to a High Court Judge.	Exceeding Rs 1 crore but not exceeding Rs 10 crores
Exceeding Rs 1 crore.	The National Commission - Head is President equivalent in status to Supreme Court Judge	Exceeding Rs 10 Crores

### **LIMITATION PERIOD**

The limitation period for lodging the complaint to any of the three forums is as per their pecuniary jurisdiction, **within two years from the date of cause of action.**

### **APPEALS:**

- a) **Appeal against the judgment of District Forum** is to be filed before the State Commission by deposit of Rs 25,000 or 50% of the claim amount whichever is less.
- b) **Appeal against the judgment of State commission** is to be filed before the National Commission by deposit of Rs 35,000 or 50% of the claim amount whichever is less
- c) **Appeal against the judgment of National Commission** is to be filed before the Supreme Court by deposit of Rs 50,000 or 50% of the claim amount whichever is less.

The limitation period for appeal in all cases referred above is 30 days.

### **DISMISSAL OF FRIVOLOUS OR VEXATIOUS COMPLAINTS:**

Complainant shall pay to the opposite party such cost, not exceeding Rs 10,000, as may be specified in the order.

## **PENALTIES:**

Where trader person fails or omit to comply with any order made by the District / State / National Commission, such trader / person shall be punishable with imprisonment **not be less than 1 month but which may extend to 3 years, or with fine which shall not be less than Rs 2,000/- but which may extend to Rs 10,000/-**, or with both.

## **TIME LIMIT**

- Without analysis or testing of commodities - 3 months.
- With analysis or testing - 5 months

Admissibility of Complaint shall ordinarily be decided within 21 days from the date on which the complaint was received.

## **Key features of the Consumer Protection Act, 2019**

### **1. Establishment of the Central Consumer Protection Authority (CCPA):**

- a) The act has the provision of the Establishment of the CCPA which will protect, promote and enforce the rights of consumers.
- b) The CCPA will regulate cases related to **unfair trade practices, misleading advertisements, and violation of consumer rights**.
- c) The CCPA will have the **right to impose a penalty** on the violators and passing orders to recall goods or withdraw services, discontinuation of the unfair trade practices and reimbursement of the price paid by the consumers.
- d) The Central Consumer Protection Authority will have an **investigation wing** to enquire and investigate such violations. The CCPA will be headed by the Director-General.
- e) CCPA has been granted wide powers to suo-moto actions (Action to be taken at its own without any request)

### **2. Rights of consumers:**

- A. **To have information** about the quantity, quality, purity, potency, price, and standard of goods or services.
- B. **To be protected** from hazardous goods and services.

- C. **To be protected from unfair or restrictive trade practices** which also includes sharing of personal information given by the consumer in confidence unless such disclosure is made in accordance with the provisions of any other law.
- D. **To have a variety of goods or services** at competitive prices

### **3. Prohibition and penalty for a misleading advertisement:**

The Central Consumer Protection Authority (CCPA) will have the power to impose fines on the endorser or manufacturer of up to Rs 1000000- (INR ONE MILLION) up to 2-year imprisonment for misleading or false advertisement (Like Laxmi Dhan Warsha Yantra).

**Worth to mention that repeated offense, may attract a fine of Rs 50 lakh and imprisonment of up to 5 years.**

**For every subsequent offence, the period of prohibition may extend to 3 (Three) Years**

**Can also prohibit the endorser for 1 year may extend up to 3 years on subsequent offences.**

### **4. Consumer Disputes Redressal Commission:**

The act has the provision of the establishment of the Consumer Disputes Redressal Commissions (CDRCs) at the national, state and district levels.

The CDRCs will entertain complaints related to;

- a) Overcharging or deceptive charging
- b) Unfair or restrictive trade practices
- c) Sale of hazardous goods and services which may be hazardous to life.
- d) Sale of defective goods or services
- e) E-commerce transactions will also be covered
- f) E-filing of complaint

### **Provision for Alternate Dispute Resolution:**

The New Act provides for mediation as an Alternate Dispute Resolution mechanism, making the process of dispute adjudication simpler and quicker.

This will help with the speedier resolution of disputes and reduce pressure on consumer courts, who already have numerous cases pending before them.



## Product Liability and Penal Consequences

Brings with in scope the product manufacturer, product service provider and product seller for any claim and compensation.

Seller is defined to include a person who is involved in placing the product for a commercial purpose and as such would include e-commerce platforms as well.

### OPERATIONS IN DECEASED A/Cs

**INDIVIDUAL:** In the event of the death of the a/c holder, the contractual relationship is terminated. Operations be stopped and balance amount be paid to nominee/ legal heirs.

**JOINT ACCOUNT:** Operation in the a/c be stopped. In case of E/S and F/S, survivor be paid the balance amount.

In case of joint operations, payment be made to the legal heirs of the deceased along with the survivor.

**PARTNERSHIP FIRM:**

**Credit Balance:** Operation in the account to be stopped and after obtaining fresh mandate operation be allowed.

**Debit Balance:** Operation be stopped and account be ruled-off to avoid application of Clayton's Rule.

Legal heirs of the deceased be advised of the outstanding liability, Firm be asked to submit fresh proposal and thereafter bank has to take credit decision as to whether to continue or to recall the facility.

**TRUSTEE:** Trust a/c is a representative account. Cheques received after the death of trustee be paid. Further operation be allowed after verifying the trust deed / in trust deed.

**ASSIGNEE OR RECEIVER:** Account of assignee / receiver are representative a/c.

As such, cheques received after the death of assignee Receiver be paid. Further operation be allowed after obtaining fresh court orders.

**LIQUIDATOR:** A/c of the liquidators are representative a/cs. As such, cheques received after the death of the liquidator be paid. Further operation be allowed after obtaining fresh court orders.

**DIRECTOR IN A COMPANY:** Cheques received after the death of the director be paid. Further operations be allowed as per fresh board resolution

**EXECUTOR OR ADMINISTRATOR:** Account of executor or administrator are representative a/c. As such, cheques received after the death of the liquidator be paid. Further operation be allowed after obtaining fresh court orders.

**AGENTS:** In the event of the death of the agent, cheques signed by the agent be paid as principal is alive. However, in the event of the death of the principal, the agency stands terminated. As such all cheques signed by agent have to be returned.

