

# SUPREME COURT OF INDIA

Sobha Hibiscus Condominium

Vs.

Sobha Developers Ltd.

C.A.No.1118 of 2016

(Mohan M. Shantanagoudar and R.Subhash Reddy,JJ.,)

14.02.2020

## JUDGMENT

### **R.Subhash Reddy,J.,**

1. This civil appeal under Section 23 of the Consumer Protection Act, 1986 (for short, 'the Act'), is filed by the complainant, aggrieved by the order dated 13.05.2015, passed by the National Consumer Disputes Redressal Commission (NCDRC), New Delhi in Consumer Complaint No.153 of 2010, rejecting the complaint filed by the appellant on the ground that, the appellant-Condominium has no locus standi to file the complaint since neither it is a 'consumer' nor it is a 'recognised consumer association' within the meaning of Section 12 of the Act.

2. The appellant/complainant is a statutory body under provisions of the Karnataka Apartment Ownership Act, 1972 (for short, '1972 Act'). It consists of members, who are the owners of the apartments in a multi- storey building, namely, "Sobha Hibiscus" situated in Amballipur Village Varthur Hobli, of South Bangalore Taluk in Karnataka. The appellant- Condominium has come into existence pursuant to a declaration made by the opposite party under the provisions of 1972 Act. When the appellant has filed complaint claiming certain reliefs before the NCDRC, the same is resisted by the opposite party, by taking a preliminary objection that the complainant is not a 'consumer' within the meaning of the Act, therefore, has no locus standi to file the complaint. The NCDRC, by referring to relevant provisions of the Act, has recorded a finding that the complainant is not a 'recognised consumer association' within the meaning of Section 12(1)(b) of the Act.

3. We have heard Sri Rajesh Mahale, learned counsel appearing for the appellant and Sri Basava Prabhu S. Patil, learned senior counsel appearing for the respondent-opposite parties.

4. Learned counsel appearing for the appellant has contended that as per the provisions of the Act, any association registered under Companies Act, 1956 or any other law for the time being in force can maintain a complaint. It is submitted that all members of the

appellant- Condominium are members who have purchased flats in the building named as “Sobha Hibiscus” and it is formed with a view to represent the grievances of its members before the authorities and the tribunal, as such, there is no reason or justification in rejecting the complaint by the NCDRC on the ground that it has no locus standi to maintain the complaint. In support of his argument, learned counsel has relied on a Full Bench judgment of the NCDRC, New Delhi in Consumer Case No.560 of 2014 and batch titled Moulivakkam Trust Heights Flats Affected Buyers Association etc. v. M/s. Prime Sristi Housing Pvt. Ltd. & 29 Ors. etc.1

5. On the other hand, Sri Basava Prabhu S. Patil, learned senior counsel appearing for the respondents, by taking us to relevant provisions of the 1972 Act and Consumer Protection Act, 1986, has submitted that the appellant cannot be said to be a voluntary consumer association, as per the provisions of the Act and it is also not a ‘consumer’ within the meaning of the Act. Learned counsel further submitted that the appellant is a body which has come into existence as per the declaration made by the opposite party, as required under the 1972 Act. It is submitted that as much as it is a body which has come into existence as per the mandatory provisions of the 1972 Act, as such, it cannot be said to be a voluntary consumer association. Further it is submitted that as the appellant will not fit into the definition of ‘consumer’ as defined under Section 2(1)(d) of the Act, complaint as filed, is not maintainable and there are no grounds to interfere with the impugned order passed by the NCDRC as the same is in accordance with law.

6. Having heard learned counsels on both sides, we have perused the impugned order and other material placed on record. After considering the submissions made by the learned counsels on both sides with reference to the provisions of the Consumer Protection Act, 1986 and the relevant provisions of the 1972 Act, we are of the view that 2017 SCC OnLine NCDRC 163 there is no merit in this appeal so as to interfere with the impugned order, for the following reasons.

7 .To maintain a complaint under the provisions of the Act complainant must be either a ‘consumer’ within the meaning of Section 2(1)(d) of the Act or it must fit into Section 12(1) of the Act. The word ‘consumer’ is defined under Section 2(1)(d) of the Act which reads as under:

“2. Definitions.-(1) In this Act, unless the context otherwise requires,-

(d) “consumer” means any person who,-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose;

Explanation,-For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;”

8. Section 12 of the Act deals with the manner in which complaint shall be made. As per the Section 12(1)(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 can file a complaint. Under clause (b) of sub-section (1) of Section 12 of the Act any ‘recognised consumer association’ whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not can file a complaint. As per the Explanation to Section 12 of the Act, ‘recognised consumer association’ means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force. It is clear from the Explanation that only a voluntary consumer association registered under the Companies Act, 1956 or any other law can maintain a complaint under Section 12(1)(b) of the Act. So as to consider whether the appellant is a voluntary consumer association or not, it is necessary to refer to relevant provisions of the 1972 Act. The Karnataka Apartment Ownership Act, 1972 is an Act of the State which is enacted with a view to provide for the ownership of an individual apartment in a building and to make such apartment heritable and transferable property and for matters connected therewith. The appellant body has come into existence pursuant to a declaration made by the opposite party in terms of the 1972 Act. Section 3(j) of the 1972 Act defines ‘declaration’ as under:

“3. Definitions.-In this Act, unless the context otherwise requires.-

(j) ‘Declaration’ means the instrument by which the property is submitted to the provisions of this Act, as hereinafter provided, and such Declaration as from time to time may be lawfully amended.”

As per Section 13 of the 1972 Act, Declarations, Deeds of Apartments and copies of floor plans are required to be registered under provisions of the Registration Act, 1908. A copy of the Deed of Declaration dated 22.05.2006 is placed on record and the same is a declaration under provisions of the said Act by the opposite party. The name of appellant body as “Sobha Hibiscus Condominium” has come into existence pursuant to clause (8) of the Declaration. The bye-laws framed by the appellant-Condominium are also placed on record. Bye-law No.5 of the Bye-laws deals with

the Members of Association which reads as under :

“5) MEMBERS OF ASSOCIATION:

5.1) All persons who have purchased constructed Apartments in the “Sobha Hibiscus” shall execute respective declarations under Section 5(ii) of the Karnataka Apartment Ownership Act, 1972 submitting their Apartments to the provisions of the Act. All persons who become the owner of the Apartment, shall acquire 10 shares of the “Sobha Hibiscus Condominium” by paying Rs.1000/- and on acquisition, shall become the members of the “Sobha Hibiscus Condominium” and be bound by the Deed of Declaration and Exhibits thereto.”

9. On a conjoint reading of the various relevant provisions of the 1972 Act and the Bye-laws of the Condominium referred above, we are of the view that the appellant-body has come into existence as per the mandatory provisions under the 1972 Act. It is clear from the objects of the said Act, that it is an Act to provide ownership of an individual apartment in a building and to make such apartment heritable and transferable property. In view of the mandatory provisions of the 1972 Act the appellant cannot be said to be a voluntary registered association for the purpose of filing a complaint before the competent authority under the provisions of the Act. The Explanation to Section 12 of the Act makes it clear that, the recognised consumer association as referred under Section 12(1)(b) of the Act means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force. By applying the said Explanation, the appellant cannot be said to be a voluntary consumer association so as to maintain a petition. Further, it will not fall within the definition of ‘consumer’ as defined under Section 2(1)(d) of the Act. The term ‘voluntary’ has been defined in Black’s Law Dictionary IX Edn. as under :

“voluntary, (14c) 1. Done by design or intention voluntary act.

2. Unconstrained by interference; not impelled by outside influence voluntary statement. 3. Without valuable consideration or legal obligation; gratuitous voluntary gift. 4. Having merely nominal consideration voluntary deed. Voluntariness”. The term ‘voluntary’ as defined in Oxford Dictionary reads as under :

“2. Of an action: performed or done of one’s own will, impulse, or choice; not constrained, promoted, or suggested by another. Also more widely, left to choice, not required or imposed, optional. Of an oath, a confession, etc: voluntarily made or given; not imposed or prompted by a promise or threat. Of a conveyance, a disposition etc.: made without money or other consideration being given or promised in return. Growing wild or naturally; or spontaneous growth. Volunteer

4.a. Assumed or adopted by free choice; freely chosen or undertaken; (of work) unpaid b. Brought about by one’s own choice or deliberate action; self-inflicted, self-induced. C. Of a society, association, etc.: entered into a free choice. Also consisting of volunteers.

5. Done by deliberate intent; designed, intentional
6. Of the will: free, unforced, unconstrained.
7. Of a person: acting from personal choice or impulse, willingly, or spontaneously, in a specified capacity. Also, endowed with the faculty of willing. B. Serving as a volunteer soldier. Also, composed of such volunteers.
8. Freely or spontaneously bestowed or made; contributed from personal choice or impulse or from generous or charitable motives.
10. Of an institution, organisation, etc.: maintained or supported solely or largely by voluntary contributions. Also more widely, existing through voluntary support, not established by statute; in the UK, (of a school) built by a voluntary institution but maintained by a local education authority. B. of, pertaining to, or advocating voluntarism in respect of Church, schools, etc.”..

In essence, a voluntary consumer association will be a body formed by a group of persons coming together, of their own will and without any pressure or influence from anyone and without being mandated by any other provisions of law. The appellant association which consists of members of flat owners in a building, which has come into existence pursuant to a declaration which is required to be made compulsorily under the provisions of 1972 Act, cannot be said to be a voluntary association to maintain a complaint under the provisions of the Act.

10. The learned counsel appearing for the respondents also relied on the very same judgment in the case of Moulivakkam Trust Heights Flats Affected Buyers Association etc.<sup>1</sup> In the aforesaid decision, a Full Bench of the National Commission has taken a view that even a Residents’ Welfare Association, if registered under a statute will qualify as a consumer association under the provisions of Section 12 of the Act provided, it qualifies as a voluntary association.

11. For the aforesaid reasons and in view of the reasons recorded in the impugned order by the NCDRC, we do not find any merit in this appeal so as to interfere with the same. The civil appeal is accordingly dismissed with no order as to costs.

## **JUDGMENT**

**R.Subhash Reddv,J.,**

12. These civil appeals are filed by the complainant in Consumer Complaint Nos.1196 and 1197 of 2016, aggrieved by the order dated 06.12.2016 and the order dated 05.01.2017 in R.A.Nos.312 and 313 of 2016 passed by the National Consumer Disputes Redressal Commission (for short, ‘NCDRC’), New Delhi.

13. The appellant-complainant is a registered Welfare Society. Consumer Complaint No.1196 of 2016 has been filed by the complainant on behalf of 8 allottees and Consumer Complaint No.1197 of 2016 has been filed by the complainant on behalf of 12 allottees with the allegations that buyers booked units with the opposite party on different dates and inspite of making major payment, possession has not been delivered to them. In the aforesaid complaint directions are sought Magainst the opposite party to hand over possession of units in all respects or in the alternative to provide other flat of identical size or to refund the amount deposited along with interest and compensation.

14. It is the case of the appellant that the complainant being a society registered under Haryana Registration and Regulation Act has filed complaint on behalf of allottees, under Section 12(1)(b) of the Consumer Protection Act, 1986 (for short, 'the Act').

15. MBoth the complaints filed by the appellant-complainant are dismissed vide impugned order dated 06.12.2016 on the ground that recognised consumer association can file complaint on behalf of single consumer only, but cannot file complaint on behalf of several consumers in one complaint. Review applications preferred against the dismissal of the complaints have also been dismissed vide order dated 05.01.2017 which order is also under challenge.

16. We have heard Sri Ashwani Kumar, learned counsel appearing for the appellant. Inspite of service of notice, there is no appearance on behalf of the respondent.

17. Learned counsel appearing for the appellant has submitted that the reasoning assigned by the NCDRC for dismissing the complaints as not maintainable, is erroneous as much as there is no restriction on the voluntary registered association to file complaint on behalf of single consumer only. It is submitted that the restriction as recorded in the impugned order will defeat the very purpose of registering an association. Learned counsel has also brought to our notice an order of the NCDRC in Consumer Complaint No.816 of 2016 wherein the Tribunal has recorded a finding that, Section 12(1)(b) of the Act does not preclude the recognised consumer association from filing a composite complaint on behalf of more than one consumers, having a similar grievance against the seller of the goods or the provider of services, as the case may be. Further, it is submitted that the said order is affirmed by this Court as the Civil Appeal Nos.10882 of 2016 etc. titled M/s. Amrapali Sapphire Developer Pvt. Ltd. v. M/s. Amrapali Sapphire Flat Buyers Welfare Association preferred against the orders passed by the NCDRC are dismissed by order dated 21.02.2017.

18. Having considered the submissions made by the learned counsel for the appellant and on perusal of the impugned order and other material placed on record, we are of the view that the finding of the NCDRC that recognised consumer association can file complaint on behalf of a single consumer, but cannot file complaint on behalf of several consumers in one complaint, is erroneous and there is no legal basis for that. From a reading of Section 12(1)(b) of the Act read with Explanation to Section 12 it is clear that voluntary registered association can file a complaint on behalf of its members to espouse their grievances. There is nothing in the aforesaid provision of the Act which would restrict its application

to the complaint pertaining to an individual complainant. If a recognised consumer association is made to file multiple complaints in respect of several consumers having a similar cause of action, that would defeat the very purpose of registration of a society or association and it would result only in multiplicity of proceedings without serving any useful purpose.

19. We are in agreement with the view taken by the NCDRC in interpreting the provisions of Section 12(1)(b) of the Act in order dated 30th August 2016 in Consumer Complaint No.816 of 2016 passed in the case of Amrapali Sapphire Flat Buyers Welfare Association etc. v. Amrapali Sapphire Developers Pvt. Ltd. etc. which is also affirmed by this Court by virtue of dismissal of Civil Appeal Nos.10882 of 2016 etc. vide order dated 21.02.2017.

20. For the aforesaid reasons, these civil appeals are allowed and the impugned common order dated 06.12.2016 passed in Consumer Complaint No.1196 and 1197 of 2016 and the orders dated 05.01.2017 passed in R.A. Nos.312 and 313 of 2016 are set aside. The matter is remitted back to the National Consumer Disputes Redressal Commission, New Delhi with a direction to consider the complaints on merits and pass appropriate orders. It is made clear that the observations made in this order are only for the purpose of disposal of these appeals which are directed against the order of the NCDRC dismissing the complaints in limine on the ground of maintainability. It is open for the Commission to consider the grievance(s) raised in the complaints on its own merits.

## **JUDGMNET**

**R.Subhash Reddv,J.,**

21. This civil appeal is filed, by the complainant(s) in Consumer Case No.1361 of 2015 filed before the National Consumer Disputes Redressal Commission (for short, 'NCDRC'), aggrieved by the order dated 09.01.2017.

22. The aforesaid complaint is filed by the appellant Monu Kumar and 32 others. In the joint complaint, it is alleged that there is deficiency of service on the part of the respondent-opposite party in respect of Buyer's agreement executed between the respective complainants and the opposite party. As the complaint was filed under Section 12(1)(c) of the Consumer Protection Act, 1986 (for short, 'the Act'), by number of consumers having the same interest, they sought permission to file a joint complaint by filing separate application. In the application for permission to file joint complaint in Consumer Case No.1361 of 2015, the following order was passed on 27.11.2015 :

“Dated 27 Nov 2015

**ORDER**

23. Learned counsel for the complainants present. Arguments heard.

24. The case stands admitted.

25. Notice be issued to opposite party returnable on 2.8.2016 with the direction to the opposite party to file the written version within 30 days from the date of receipt of notice as per Section 13 of the Consumer Protection Act, 1986. Time of 15 days can be extended by filing an application by the opposite party. In case, the written version is not filed within the aforesaid period, the right of the opposite party to file the written version shall stand forfeited. Having admitted the Consumer Case and issued notice, the impugned order is passed rejecting the application for grant of permission to file joint complaint under Section 12(1)(c) of the Act and consequently rejecting the complaint filed.

26. We have heard learned counsels on both sides, perused the impugned order and other material on record. As much as complaint was filed on behalf of number of individual consumers, an application was filed seeking permission to file joint complaint and after hearing the arguments of the learned counsel, case was admitted and notice was issued. Though expressly it is not stated that permission is granted in the application seeking permission to file joint complaint, but in view of the fact that admission of the complaint is recorded in the order dated 27.11.2015 and notice was issued the permission is to be read as inherent in the order of admission. When the specific application was moved seeking permission for filing joint application and having passed order of admission by issuing notice on such application, the Commission ought not to have rejected the application by the impugned order. The grant of permission is to be read inherently into the order dated 27.11.2015.

27. For the aforesaid reasons, the impugned order is set aside, matter is remitted back to the National Consumer Disputes Redressal Commission, New Delhi with a direction to consider the matter afresh and dispose of the complaint case on its own merits. The civil appeal is accordingly allowed with a direction as indicated above.