

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1676 OF 2019

ANJUM HUSSAIN & ORS.

...Appellant(s)

VERSUS

INTELICITY BUSINESS PARK PVT. LTD. & ORS.

...Respondent(s)

J U D G M E N T

Uday Umesh Lalit, J.

1. This appeal under Section 23 of the Consumer Protection Act, 1986 (hereinafter referred to as the Act) is directed against the Judgment and Order dated 10.10.2018 passed by the National Consumer Disputes Redressal Commission, New Delhi ('the National Commission', for short) in Consumer Case No.2241 of 2018 preferred by the appellants.

2. The appellant no.1 had booked an office space admeasuring about 440 sq.ft in a project consisting of residential units, shops and offices launched by the respondent. The Builder - Buyer Agreement was executed between the appellant no.1 and the respondent on 02.12.2013, whereunder the respondent was to deliver possession of the office unit within four years. Similar such Agreements were entered into between the appellant nos.2 to 44 and

the respondent in respect of various units from the same project.

3. Since the respondent had failed to honour its commitments of delivering possession in four years and as the project was still at the stage of excavation, Case No.2241 of 2018 was filed by the appellants 1 to 44 seeking refund of the amounts paid by them to the respondent along with interest and compensation. An application under Section 12(1)(c) of the Act was also filed by the appellants.

4. The first listing of the case before the National Commission was on 10.10.2018 when the application moved by the appellants under Section 12(1)(c) of the Act was dealt with by the National Commission as under:-

1. This complaint has been instituted for the benefit of entire class of buyers, who have booked shops/offices in a project namely "Intellicity" consisting of residential units, shops and offices at Greater Noida. The scope of this complaint is not restricted only to the complainants. An application seeking permission in terms of Section 12(1)(c) of the Consumer Protection Act, to institute this complaint on behalf of all such buyers of commercial units, being IA/18734/2018, has also been filed, along with the complaint. It is alleged that the complainants are consumers as they had booked small shops/offices for the purpose of earning their livelihood by means of self-employment.

1. As provided in Section 2(1)(d) of the Consumer Protection Act, the term 'consumer' excludes from its ambit, a person hiring or availing services for a commercial purpose, unless he can bring his case within the four-corners of the explanation below Section 2(1)(d) of the Consumer Protection Act. A person hiring or availing services for the purpose of earning his livelihood by way of self-employment has thereby been included in the definition of

'consumer'. Otherwise, a shop/commercial unit is deemed to be booked for a commercial purpose.

2. Since the scope of the complaint is not restrict only to the complainants and encompasses all the allottees of the shops/commercial units, as is specifically stated in the complaint and is also evident from the prayers made in the compliant, seeking direction to the opposite party to refund the amount deposited by each complainant as well as other allottees along with interest and compensation, it would be maintainable as a class action only if it is alleged and shown that all the allottees of the shops/commercial units in the above referred project had booked the same solely for the purpose of the earning their livelihood by way of self-employment, meaning thereby that all the allottees intend to work themselves in these shops/commercial units and the occupation of the said units by them has to be for the purpose of earning their livelihood. A careful perusal of the complaint would show that it is not even alleged that all the allottees of the commercial units/shops in the above referred project had booked the said shops/units solely for the purpose of the earning their livelihood by way of self-employment. In the absence of such an averment in the complaint, no evidence can even be led to prove that not only the complainants but all the allottees of the shops/commercial units had booked the same solely for the purpose of the earning their livelihood by way of self-employment. Even otherwise, the complainants cannot know the purpose for which the allottees, other than the complainants had booked the shops, commercial units in the aforesaid project. The said purpose can be in the knowledge only of the concerned allottees. Therefore, this class action under Section 12(1)(c) of the Consumer Protection Act on behalf of not only the complainants but all the allottees of the shops/commercial units in the aforesaid project is not maintainable."

5. The National Commission thus concluded that the case could not be accepted as class action and dismissed the same. It was however observed that the dismissal would not come in the way of the complainants availing such other remedies as would be open to them.

6. The dismissal of the case as class action is questioned in

this appeal.

7. We heard Mr. Yash Srivastava, learned Advocate for the appellants and Mr. Ashutosh Dubey, learned Advocate for the respondent.

8. Relevant provisions of the Act may be adverted to at the outset. Sections 2(1)b and 2(1)(d) of the Act define "complainant" and "consumer" as under:-

(b) "complainant" means -

(i) a consumer; or

(ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or

(iii) the Central Government or any State Government; or

(iv) one or more consumers, where there are numerous consumers having the same interest;

(v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint;

(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 payments, 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, and services availed by him by means of self-employment;

9. Section 12 of the Act states:

12. Manner in which complaint shall be made
- (1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be filed with a District Forum, by -

- (a) the 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) any recognised consumers association whether the consumer to whom the goods sold or delivered or service provided or agreed to be provided is a member of such association or not;
- (c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or
- (d) the Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general."

10. Section 13(6) of the Act reads as under:

13. Procedure on admission of complaint -
(1) to (5).....

(6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of subsection (1) of section 2, the provisions of Rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a the plaintiff and the defendant shall be construed as a reference to a complaint or the opposite party, as the case may be.

11. According to the National Commission, though all the appellants had a common grievance that the respondent had not delivered possession of the respective units booked by them and thus the respondent was deficient in rendering service, it was not shown how many of the allottees had booked the shops/commercial units solely for the purchase of earning their livelihood by way of self-employment.

12. In *Chairman, Tamil Nadu Housing Board, Madras vs. T. N. Ganapathy*¹ it was held by this Court that the persons who may be represented in a Suit under Order 1 Rule 8 of Civil Procedure Code need not have the same cause of action and all that is required for application of said provision is that the persons concerned must have common interest or common grievance. What is required is sameness of interest. Paragraphs 7 and 9 of the decision were as under:-

7. On the question of maintainability of the

¹ (1990) 1 SCC 608

suit in a representative capacity under Order I, Rule 8 of the Code of Civil Procedure, it has been contended that since the injury complained of is in regard to demand of money and that too by a separate demand against each of the allottees, giving rise to different causes of action, Rule 1 has no application. The learned counsel proceeded to say that it is not known whether each of the allottees in Ashok Nagar had been even served with an additional demand before the suit was filed; and further emphasised that those who had been so served are interested in defeating only the demand individually referable to each of them. Each one of them is not interested in what happens to the others. It is, therefore, suggested that only such of the allottees who have already been served with additional demands are entitled to maintain an action in court, and they also should do it by filing separate suits. We do not find any merit in the argument. The provisions of Order I of Rule 8 have been included in the Code in the public interest so as to avoid multiplicity of litigation. The condition necessary for application of the provisions is that the persons on whose behalf the suit is being brought must have the same interest. In other words either the interest must be common or they must have a common grievance which they seek to get redressed. In *Kodia Goundar v. Velandi Goundar* (ILR 1955 Mad 339: AIR 1955 Mad 281) a Full Bench of the Madras High Court observed that on the plain language of Order I Rule 8, the principal requirement to bring a suit within that rule is the sameness of interest of the numerous persons on whose behalf or for whose benefit the suit is instituted. The court, while considering whether leave under the rule should be granted or not, should examine whether there is sufficient community of interest to justify the adoption of the procedure provided under the rule. The object for which this provision is enacted is really to facilitate the decision of questions, in which a large number of persons are interested, without recourse to the ordinary procedure. The provision must, therefore, receive an interpretation which will subserve the object for its enactment.

There are no words in the rule to limit its scope to any particular category of suits or to exclude a suit in regard to a claim for money or for injunction as the present one.

... ..

9. It is true that each of the allottees is interested individually in fighting out the demand separately made or going to be made on him and, thus, separate causes of action arise in the case, but, that does not make Order I Rule 8 inapplicable. Earlier there was some doubt about the rule covering such a case which now stands clarified by the Explanation introduced by the Code of Civil Procedure (Amendment) Act, 1976, which reads as follows:

"Explanation.— For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be."

The objects and reasons for the amendment were stated below:

"Objects and Reasons: Clause 55; sub-clause (iv), — Rule 8 of Order I deals with representative suits. Under this rule, where there are numerous persons having the same interest in one suit, one or more of them may, with the permission of the court, sue or be sued, on behalf of all of them. The rule has created a doubt as to whether the party representing others should have the same cause of action as the persons represented by him. The rule is being substituted by a new rule and an explanation is being added to clarify that such persons need not have the same cause of action."

There is, therefore, no doubt that the persons who may be represented in a suit

under Order I, Rule 8 need not have the same cause of action. The trial court in the present case was right in permitting the respondent to sue on behalf of all the allottees of Ashok Nagar. We, therefore, do not find any merit in this appeal which is dismissed with costs. Before closing, however, we would like to point out that the plaintiff has represented only those in the low income group in Ashok Nagar who will be governed by this judgment, and nothing that has been said or decided in this case is applicable to any other group or colony."

13. Very same issue was dealt with by Full Bench of the National Commission in *Ambrish Kumar Shukla and Ors. vs. Ferrous Infrastructure Pvt. Ltd.*². The National Commission relied upon the decision of this Court in *T.N. Housing Board*¹. Relevant portion of the decision of the National Commission was :-

"10. Since by virtue of Section 13(6) of the Consumer Protection Act, the provisions of the Order 1 Rule 8 of CPC apply to the consumer complaints filed by one or more consumers where there are numerous consumers having the same interest, the decision of the Hon'ble Supreme Court in *Tamil Nadu Housing Board (supra)* would squarely apply, while answering the reference. The purpose of giving a statutory recognition to such a complaint being to avoid the multiplicity of litigation, the effort should be to give an interpretation which would sub serve the said objective, by reducing the increasing inflow of the consumer complaints to the Consumer Forums. The reduction in the number of consumer complaints will be cost effective not only for the consumers but also for the service provider.

11.....As held by the Hon'ble Supreme Court in *Tamil Nadu Housing Board (supra)*, the interest of the persons on whose behalf the claim is brought must be common or they must have a common grievance which they seek to get addressed. The defect or deficiency in

the goods purchased, or the services hired or availed of by them should be the same for all the consumers on whose behalf or for whose benefit the complaint is filed. Therefore, the oneness of the interest is akin to a common grievance against the same person. If, for instance, a number of flats or plots in a project are sold by a builder/developer to a number of persons, he fails to deliver possession of the said flats/plots within the time frame promised by him, and a complaint is filed by one or more such persons, either seeking delivery of possession of flats/plots purchased by them and other purchasers in the said project, or refund of the money paid by them and the other purchasers to the developer/builder is sought, the grievance of such persons being common i.e. the failure of the builder/developer to deliver timely possession of the flats/plots sold to them, they would have same interest in the subject matter of the complaint and sufficient community of interest to justify the adoption of the procedure prescribed in Order 1 Rule 8 of the Code of Civil Procedure, provided that the complaint is filed on behalf of or for the benefit of all the persons having a common grievance against the same developer/builder, and identical relief is sought for all such consumers.

The primary object behind permitting a class action such as a complaint under Section 12(1)(c) of the Consumer Protection Act being to facilitate the decision of a consumer dispute in which a large number of consumers are interested, without recourse to each of them filing an individual complaint, it is necessary that such a complaint is filed on behalf of or for the benefit of all the persons having such a community of interest. A complaint on behalf of only some of them therefore will not be maintainable. If for instance, 100 flat buyers/plot buyers in a project have a common grievance against the Builder/Developer and a complaint under Section 12(1)(c) of the Consumer Protection Act is filed on behalf of or for the benefit of say 10 of them, the primary purpose

behind permitting a class action will not be achieved, since the remaining 90 aggrieved persons will be compelled either to file individual complaints or to file complaints on behalf of or for the benefit of the different group of purchasers in the same project. This, in our view, could not have been the Legislative intent. The term 'persons so interested' and 'persons having the same interest' used in Section 12(1)(c) mean, the persons having a common grievance against the same service provider. The use of the words 'all consumers so interested' and "on behalf of or for the benefit of all consumers so interested", in Section 12(1)(c) leaves no doubt that such a complaint must necessarily be filed on behalf of or for the benefit of all the persons having a common grievance, seeking a common relief and consequently having a community of interest against the same service provider."

14. It was observed by this Court in *T.N. Housing Board*¹ that the provision must receive an interpretation which would subserve the object for its enactment. It is in this light that the Full Bench of the National Commission held that oneness of the interest is akin to a common grievance against the same person.

15. However, the National Commission in the instant case, completely lost sight of the principles so clearly laid down in the decisions referred to above. In our view, the approach in the instant case was totally erroneous.

16. We, therefore, allow this appeal, set aside the Order under appeal. The application preferred by the appellants under Section 12(v)(o) of the Act is held to be maintainable. Case No.2241 of 2018 is restored to the file of the National Commission and shall be proceeded with in accordance with law.

17. The appeal is allowed in aforesaid terms. No costs.

.....J.
(Arun Mishra)

.....J.
(Uday Umesh Lalit)

New Delhi;
May 10, 2019.