

II (2017) CPJ 391 (NC)
NATIONAL CONSUMER DISPUTES
REDRESSAL COMMISSION, NEW DELHI
Hon'ble Mr. Justice V.K. Jain, Presiding Member

AMRAPALI SAPPHIRE FLAT BUYERS WELFARE ASSOCIATION—Complainant
versus

AMRAPALI SAPPHIRE DEVELOPERS PVT. LTD. & ANR.—Opposite Parties
Consumer Complaint Nos. 816 to 819 of 2016 with I.A. Nos. 4598, 5646, 7247, 8126, 4600, 7249, 8127, 4602, 7251, 8128, 4604, 7253, 8129 of 2016 (For exemption from filing typed copies of docs., Arbitration, maintainability of complaint, C/delay)—Decided on 30.8.2016

(i) Consumer Protection Act, 1986 — Sections 12(1)(b), 21(a)(i) — Complaint — Maintainability — If a Voluntary Consumer Association is registered under any law for the time being in force, it will be deemed to be a recognized Consumer Association for purpose of filing complaint in terms of Section 12(1)(b) of Act — No separate recognition is required in such case, nor does the Act contain any provision for recognizing Voluntary Consumer Association — Complainant is registered under Societies Registration Act.

[Para 3]

(ii) Consumer Protection Act, 1986 — Section 21(a)(i) — Pecuniary Jurisdiction — Consumer Association — It is the aggregate value of services which has to be taken for purpose of determining pecuniary jurisdiction of Consumer Forum.

[Para 8]

Result : Ordered accordingly.

Cases referred:

1. *Atharva Towers Owners Association v. M/s. Raheja Developers Ltd.*, CC No. 250 of 2014. (Referred) [Para 7]

2. *Public Health Engineering Department v. Upbhokta Sanrakshan Samiti*, I(1992) CPJ 182 (NC). (Relied) [Para 8]

Counsel for the Parties:

For the Complainant : *Counsel for the complainant.*

For the Opposite Parties : *Mr. Rakesh Kumar, Mr. Bipin Kumar, Mr. Suresh Chandra Sharma and Mr. Rupesh Kumar Sinha, Advocates.*

ORDER

IA/7247, 7249, 7251 & 7253/2016 (Maintainability of Complaint)

Mr. Justice V.K. Jain, Presiding Member—These are the applications filed by the opposite party, namely, Amrapali Sapphire Developers Pvt. Ltd. The applicant is seeking dismissal of the complaint primarily on the grounds that, (i) the complainant has no *locus standi* to file the present complaint on behalf of several allottees each of whom has a separate and distinct cause of action, (ii) the complainant is not a voluntary consumer association, (iii) since the sale consideration for each flat was less than Rs. 1 crore, this Commission lacks the pecuniary jurisdiction to entertain the complaint.

2. Section 12(1)(b) of the Consumer Protection Act reads as under:

“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—

- (b) 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;” It would thus be seen that a complaint can be instituted by a recognized consumer association even if the consumer to whom the goods are sold or delivered or agreed to be sold or services are provided or agreed to be provided is a member of such an Association or not.

3. The first question which arises for consideration is as to whether the complainant is a recognized consumer association or not. The explanation below Section 12 provides that for the purpose of the said section recognized consumer association means any voluntary consumer association registered under the Companies Act or any other law for the time being in force. This would mean that if a voluntary consumer association is registered under any law for the time-being in force, it will be deemed to be a recognized consumer association for the purpose of filing a complaint in terms of Section 12(1)(b) of the Consumer Protection Act. No separate recognition is required in such a case, nor does the Act contain any provision for recognizing a Voluntary Consumer Association. Admittedly, the complainant is registered under Societies Registration Act. Therefore, the first requirement of the explanation stands fulfilled.

It is contended by the learned Counsel for the applicant that mere registration under the Societies Registration Act or any other for the time being does not amount to recognition of a consumer association. His contention is that since Bureau of Indian Standards (Recognition of Consumers Associations) Rules, 1991 lay down the procedure for recognition of consumer associations, the said procedure is required to be followed and a certificate of recognition is to be obtained from the Govt. of India, Ministry of Consumer Affairs in terms of the aforesaid rules. I, however, find no merit in this contention. As noted earlier, as per the explanation below Section 12, recognized consumer association means any voluntary consumer association registered under Companies Act or any other law for the time being in force. Once a voluntary consumer association is registered in the aforesaid manner, it will be deemed to be a recognized consumer association provided that it is otherwise a voluntary association of the

consumers. The recognition from the Govt. of India in terms of the BIS Rules or any other rules framed under any other act, in my view, is not envisaged in the Consumer Protection Act. Therefore, I find no merit in the contention.

4. The second question which then arises is as to whether the complainant can be said to be a voluntary consumer association or not. The term 'voluntary consumer association' has not been defined in the Consumer Protection Act. Giving an ordinary meaning to it, the expression voluntary consumer association would mean that the association in question should be an organization of consumers and the membership of the organization should not be compulsory.

5. As per Clause 4 of the Memorandum of Association of the complainant, its aims and objectives *inter alia* include the following:

- “(i) To protect the collective interest of the registered members of the Association;
- (ii) To protect interest of the members by representing the Association at various relevant Forums, appropriate Government, quasi-Government, judicial, statutory and other relevant bodies, including local municipal bodies, authorities, builders, developers, association of builders and developers and other organizations which may impact the members monetarily or otherwise and take all such steps as may be necessary in this regard;
- (iii) To perform such other legal and lawful acts that may be necessary for the members of the Association;
- (iv) To work for the well-being and safety of the members of the Association, who are owners of residential/commercial plot(s) on anywhere in India;
- (v) To project, protect and pursue all matters in the collective interests of members with the society or needy persons including timely delivery and possession of plots;
- (vi) To do all acts, matters and things as are incidental or conducive to the attainment of the above aims and objects, or any one or more of them.”

Considering the above-referred aims and objectives of the complainants' society, it would be difficult to dispute that it has been set up for the purpose of protecting the interests of consumers including flat/plot buyers. Such an organization, in my opinion, qualifies as a consumer association. Since its membership is voluntary and it is registered under the Societies Registration Act, the complainant is a recognized consumer association in terms of the explanation below Section 12 of the Consumer Protection Act. Therefore, I find no merit in the first ground taken in the application.

6. The next ground taken in the application is that since the value and the services, *i.e.*, the sale consideration of the flats in each case is less than Rs. 1 crore, this

Commission lacks the pecuniary jurisdiction to entertain the complaint This is also the contention of the learned Counsel for the applicant/opposite party that the complainant cannot club the individual causes of action available to each flat buyer. In my view, Section 12(1)(b) of the Consumer Protection Act does not preclude the recognized 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 the services, as the case may be. There is nothing in the aforesaid provision which would restrict its application to the complaint pertaining to an individual complainant. If a recognized consumer association is made to file multiple complaints in respect of several consumers having a similar cause of action, that would result only in multiplicity of proceedings without serving any useful purpose.

7. In CC No. 250 of 2014, ***Atharva Towers Owners Association v. M/s. Raheja Developers Ltd.***, an association of consumers filed a complaint espousing the cause of as many as 43 members. An application seeking permission of this Commission to add members/allottees of the association to the complaint was filed. The application having been opposed, this Commission *vide* order dated 5.11.2014 allowed the impleadment after excluding the prayers (e), (f) and (g) of the complaint, but granting liberty to those persons to file individual complaints. Being aggrieved from the order passed by this Commission, the complainant association approached the Hon'ble Supreme Court by way of Civil Appeal No. 10602 of 2014. *Vide* its order dated 14.3.2016, the Hon'ble Supreme Court directed that since the dispute was pending before this Commission, it would be appropriate if prayers (e), (f) and (g) are also considered and this Commission looks into the grievances of each of the flat owners individually in respect of those particular prayers. Each flat owners was directed to file an affidavit setting out his or her grievance concerning prayers (e), (f) and (g). In view of the above-referred decision of the Hon'ble Supreme Court, it would not be correct to say that a complaint by a voluntary consumer association on behalf of more than one consumers, having a similar cause of action against the same seller of goods or provider of services, will be not maintainable. The only requirement would be to direct each and every allottee on whose behalf the complaint is filed to file an affidavit concerning the prayers to the extent they pertain to his individual grievances.

8. Once it is accepted that a consumer complaint on behalf of more than ten consumers can be filed by a recognized consumer association, it can hardly be disputed that it is the aggregate value of the services which has to be taken for the purpose of determining the pecuniary jurisdiction of the Consumer Forum before which the complaint is filed. A reference in this regard can be made to the decision rendered by a 4-Members Bench of this Commission in ***Public Health Engineering Department v. Upbhokta Sanrakshan Samiti***, I (1992) CPJ 182 (NC). In that case a complaint, seeking to recover compensation for the negligence resulting in thousands of persons getting infected in a city was filed. The State Commission took the view that the complaint ought to have been filed before the District Forum. Setting aside the said order, this Commission *inter alia* held as under:

“5. In our opinion this proposition is clearly wrong since under the terms of Section 11 of the Act the pecuniary jurisdiction of the District Forum would depend upon the quantum of compensation claimed in the petition. The view expressed by the State Commission is not based on a correct understanding or interpretation of Section 11. On the plain words used in Section 11 of the Act, the aggregate quantum of compensation claimed in the petition will determine the question of jurisdiction and when the complaint is filed in a representative capacity on behalf of several persons, as in the present case, the total amount of compensation claimed by the representative body on behalf of all the persons whom it represents will govern the valuation of the complaint petition for purposes of jurisdiction.

6. The quantum of compensation claimed in the petition being far in excess of Rs. 1lakh the District Forum was perfectly right in holding that it had no jurisdiction to adjudicate upon the complaint. The reversal of the said order by the State Commission was contrary to law. The Order of the State Commission is accordingly set aside, and the order passed by the District Forum directing the return of the Complaint Petition to the petitioner for being presented to the competent Forum under the Consumer Protection Act, 1986, will stand resorted. No costs.”

9. If the aggregate value of the services in respect of the flat buyers on whose behalf this complaint is filed is taken exceeds Rs. 1 crore. Therefore, this Commission does possess the requisite jurisdiction to entertain the complaint.

For the reasons stated hereinabove, these applications are dismissed.

CC/816 to 819 of 2016

Written version is stated to have been filed.

Rejoinder be filed within two weeks. Affidavit of admission/denial of the documents shall be filed by both the parties within four weeks from today, The complainant shall file affidavit by way of evidence within six weeks from today. Such an affidavit by the opposite party can be filed within next four weeks.

List for directions on 3.11.2016.

Ordered accordingly.

Citation	Decided On	Party Name
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