

Vikrant Singh Malik & 25 Ors.  
Versus  
Supertech Limited & 2 Ors (Through its M.D.)

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Consumer Case No. 1290 OF 2015

Decided on 24 august 2020

Author: Hon'ble Dr. Chandrachud  
Bench: Hon'ble Dr. Chandrachud, K.M. Joseph

Law Point –Whether filing complaint by more than one consumers with Sameness of the interest will become a complaint for ‘class action’

A case before the Hon’ble Supreme court was in the matter of Vikrant Singh Malik & 25 Ors. Versus Supertech Limited & 2 Ors (Through its M.D.) Consumer Case No. 1290 OF 2015. The issue involved was as to whether the complaint by 26 consumers with the same interest against the same builder in the matter of housing could be admitted before the apex commission when status of flat of each complainant was different. All the 26 consumers filed a joint complaint along with an application for permission to file joint complaint. Section 2(1) (c) read with 2(1) (b) (IV) of the Act 86 invoked for filing joint complaint.

**Facts of the case**

A joint complaint filed by 26 flat buyers against Supertech builder with same interest, seeking same relief –

1. Direct the Supertech to withdraw its offer of possession without a valid Occupancy Certificate/Completion Certificate
2. Withdraw demand raised and refund if already paid for open as well as covered car parking
3. Direct to withdraw demand /refund money under super area declared.
4. Direct to withdraw cost escalation charges
5. Direct to withdraw demand raised under the head "Farmer's compensation charges
6. Direct to withdraw/refund any demand raised/collected in the name of club charges
7. Direct to withdraw the demand of interest

8. Direct Opposite Party No.2 to cancel/withdraw the license granted to the Opposite Party No.1 and takeover the project
9. Direct the Opposite Party No.1 to withdraw the demand raised in the name of Labour Welfare charges, water connection charges / EDC charges, maintenance charges
10. Direct the Opposite Party No.1 to pay delayed possession penalty

But there was variation of facts of each homebuyer about the allotment of their flat such as –  
Apartment Distinct

Date of Buyer agreement different

Date of execution of agreement different

Price of flat Different

Area of flat different

While discussing the facts of the case, National Commission observed a few discrepancies in the Present complaint namely Frame of complaint, nature of pleadings and relief sought

- Only seeks to high light the grievance of 26 complaints and they do not possess the character of representative for all having the common interest which is the essential element of section 2(i)(c) and then could refer to section 13(6)

In other words the prayer clause have to be drafted keeping in mind that it is for the benefit for all the consumers The content of the complaint must also not be a single party centric it should speak for all the consumers

- NCDRC also dismissed the complaint in entirety giving liberty to the complainants to file individual complaints before the appropriate forum because of the fact that cost, size area and date of booking /purchase /allotment of each consumer were different.

Matter now comes before the Supreme Court

Supreme Court observes

- Regarding factually different cost,size ,booking date and price variation ,Supreme court refers to full bench order in the matter of Ambrish Kumar Shukla v/s Ferrous Infrastructure Pvt. Ltd (2017)NC wherein the issue was explained in details by giving example-

If a developer has sold 100 flats in a project out of which 25 are three bedroom flats, 25 are two bedroom flats and 50 are one bedroom flats and failed to deliver timely possession, all the allottees irrespective of size shall have common grievance against the

builder .A complaint filed by all the consumers with the relief for the benefit of all consumers is maintainable under section 2(1) (c) of the act

- There is an element of sameness of the interest and with common interest; complainants could file a joint complaint.
- Character of representative of all the consumers is missing in the complaint .Facts also revealed that some of the homebuyers had settled their grievance with builder and taken the possession ,hence complaint in the present form was not maintainable
- Since the object and purpose of the act is welfare of the consumers NCDRC can reconsider the decision to dismiss complaint in entirety when element of sameness of interest of complainants is very much apparent on face of it. This issue can also be considered in the light of the fact advocate appearing on behalf of complainants had sought liberty to file application to amend the complaint

Supreme Court sends back the complaint to NCDRC for re-considering to dismiss in entirety.

This means Supreme Court wishes the NCDRC to allow amendment in complaint by giving it representative character for all the aggrieved homebuyers for the sameness of interest.

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