

(2017) 06 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

Case No : 482 of 2016

M/S. S.K. ENTERPRISE

APPELLANT

Vs

SH. PRASANTA CHATTERJEE & ORS.

RESPONDENT

Date of Decision : 12-06-2017

Acts Referred:

Consumer Protection Act, 1986, Section 19, Section 12(1)(c), Section 13(2)(a) - Appeals - Manner in which complaint shall be made. - Procedure on admission of complaint

Citation : 2017 3 CPR 215

Hon'ble Judges : B.C. Gupta, S.M. Kantikar

Advocate : Prabir Basu, Sanjoy Kumar Ghosh, Anil Dhar, Pawan Kumar Ray

Judgement

1. The instant appeal has been filed under Section 19 of the Consumer Protection Act, 1986 against the impugned order dated 15.04.2016 passed in M.A. No. 687 of 2014 in C.C. No. 255 of 2014 by West Bengal State Consumer Disputes Redressal Commission, Kolkata. By the said order, the State Commission rejected the miscellaneous application and the OPs were directed to file written version in accordance with Section 13 (2) (a) of the Consumer Protection Act, 1986.

2. The facts in brief for the disposal of the appeal are that initially the complaint was filed by 16 complainants with regard to the deficiency in service against OPs, which was higher than the pecuniary jurisdiction of the District Forum. The total valuation of the flats was more than three crores, therefore, a revision petition before West Bengal State Consumer Disputes Redressal Commission (in short, "the State Commission") was filed by OP for dismissal of complaint. The State Commission vide order dated 18.6.2014 allowed the revision petition filed by the OP and dismissed the complaint case No. CC/479/2013 before the District Forum for want of pecuniary jurisdiction. The complaint was dismissed with liberty to file the complaint before the appropriate forum. Out of 16 complainants, complainants No. 1, 3, 4 and 6 alongwith complainants No. 2, 5 and 7 in the present appeal, who were not the parties in the earlier complaint, filed a fresh

complaint before the State Commission, contending that the present respondents No. 1 to 7 had a common interest for filing the present complaint. The fresh complaint was numbered as Complaint Case No. 255 of 2014.

3. Having heard the learned counsel for the parties in detail and examining the documents available on file, it is made out that the total value of the flats, which are the subject matters of the complaint, does not exceed Rs. 1 crore. The State Commission have, therefore, rightly held that they had the pecuniary jurisdiction to entertain the fresh complaint. The plea taken by the appellant/OP that the complaint in the present form could not have been filed after including three more persons, does not hold any valid ground. The State Commission had granted liberty to 16 persons to file fresh complaint before the forum of competent jurisdiction. We, therefore, do not find any valid ground to accept the present appeal and to modify the impugned order passed by the State Commission.

4. It is, however, observed that the consumer complaint in question has been filed by 7 persons claiming to have common interest in the matter in accordance with Section 12 (1) (c) of the Consumer Protection Act, 1986. The complainants are required to seek permission from the State Commission for filing the joint complaint in accordance with the procedure laid down in the Act. The matter was discussed in detail in a recent judgment of a larger Bench of this Commission in consumer complaint No.97/2016-Ambrish Kumar Shukla & Ors. vs. Ferrous Infrastructure Pvt. Ltd dated 7.10.2016 . In the said reference while dealing with the scope of Section 12 (1) (c) of the Act, Larger Bench has observed as under: - 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." On reading of the above observations of Larger Bench it is clear that where there are numerous consumers having common interest, one or more consumers can be permitted to maintain a joint complaint provided there is a common interest amongst the complainants and numerous other consumers and the complaint has been filed for the benefit of all such consumers including the consumers who are not party to the complaint but having same interest.

5. On the basis of foregoing discussion, we dismiss this appeal with the direction that the State Commission shall decide the complaint as per law and after taking into consideration the provisions of Section 12 (1) (c) of the Consumer Protection Act, 1986. The parties are directed to appear before the State Commission on 21.08.2017. Copies of this order be sent to parties and their respective counsel.