

(2000) 01 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

PRESIDENT APARTMENTS ALLOTTEES WELFARE ASSOCIATION	APPELLANT
Vs	
Ghaziabad Development Authority	RESPONDENT

Date of Decision : 28-01-2000

Acts Referred:

Citation : 2000 2 CPJ 38

Hon'ble Judges : Moksh Mahajan J.

Final Decision : Complaint dismissed

Judgement

1. THE question posed before me is regarding the maintainability of the proceedings in a complaint filed in UTPE No. 117/98.

2. THE facts in brief are that an Association of Allottees of Vaishali Apartments was formed and was registered under the Societies Registration Act, XXI, 1860. Through its President, it filed a complaint with the Commission that the respondent Ghaziabad Development Authority (for short GDA) has indulged in unfair and restrictive trade practices under the Monopolies and Restrictive Trade Practices Act (for short Act) in so far as it has delayed the completion of the flats as promised and has escalated the price of the flat contrary to the promise made that the work would be speedily executed. The respondent is a Government Undertaking engaged in, amongst other activities, providing residential Units to the public. Under Vaishali Apartment Scheme 547-1989 as launched, the apartments of various categories measuring different areas were offered on both cash down payment as well on hire purchase basis. The flats were to be completed within two years by the end of 1991. By not making available the flats within stipulated period the respondent is stated to have indulged in unfair trade practices falling within the meaning of Section 36A(i), (iv) and (vi) of the Act and for not keeping the cost of construction at minimum, it has adopted restrictive trade practice in terms of Section 10(a)(i) of the Act in so far as undue cost has been imposed on the flat owners.

On receipt of the complaint Notice of Enquiry was issued in response to which the respondent took a preliminary objection against the maintainability of the

proceedings. It is stated that the present complaint has been filed on behalf of 74 persons/allottees of different towers. The complaint is not registered as provided in Section 2(n) of the Act as also the persons/allottees have no common interest as mentioned in Section 2(n) of the Act.

3. MR. N.R. Samy, Advocate appearing on behalf of the complainant stated that as the words "registered consumer association" convey there has to be, (i) an association (ii) which is to be of consumers, and (iii) is also registered. Under the Act consumer is not defined and as such reference can be usefully made to the Consumer Protection Act. Section 2(i)(d) of the Consumer Protection Act, 1986 defines the "consumer" as any person who buys goods or services for a consideration. The term "person" in turn has been defined in Section 2(i)(m) of the Consumer Protection Act, 1986 as under : (i) a firm whether registered or not; (ii) a Hindu undivided family; (iii) a Co-operative Societies; (iv) every other association or persons whether registered under the Societies Registration Act, 1860 or not.

Undeniably the applicant is an association of consumers in terms of the Act. As both MRTP Act as well Consumer Protection Act have been brought into being for the benefit of the consumer, non-registration of the complaint under the provisions of Rule 3 in MRTPC (Recognition of Consumers Association) Rules, 1987 should not stand in the way of benefit available to the consumer. Otherwise too under the definition of "registered consumer association" as provided in Section 2(n) of the Act, the word "and" used in between the sentences "or any other law for the time being in force which is formed for the purpose of protecting the interest of consumers generally" and "is recognised by the Central Government as such association on any application made in this behalf in such form and such manner as may be prescribed" is to be used as disjunctive and not as conjunctive. As given on page 250 of the book under the title Principles of Statutory Interpretation by Justice G.P. Singh (IV Edition) 1989 "the word "or" is normally disjunctive and "and" is normally conjunctive. But at time they are read as vice versa to give effect to the manifest intention of the Legislature as disclosed from the context". As intent of the Legislature is manifested in the beneficial provisions framed under the Act the expression "registered consumer association" falls under the definition as given in Section 2(n) of the Act. Reliance in support is placed on the decision of the Commission of National Consumer Protection Council v. Madhur Food Products Ltd., reported in III (1998) CPJ 30 (MRTP)=1998 CTJ 350 (MRTPC).

4. IN the alternative, the applicant's case is covered under Regulation 57 of the MRTPC Regulations, 1991 where the Commission is empowered to entertain the application of the persons having common interest. The application of the Association has also been filed for registration before the Department of Company Affairs which has not yet been registered on some technical grounds. Responding to the arguments, Mr. Sudhir Kulshreshtha, Advocate for the respondent stated that since the term "registered consumers association" has

been defined under Section 2(n) of the Act, no reference need be made to other Acts as is the case pleaded by the complainant. It is further stated that the Commission has already taken a decision on the issue in the case of National Consumer Protection Council v. Madhur Food Products Ltd. (supra). Accordingly the proceedings in a complaint are not maintainable. Rival submissions made on both sides have been considered. It is well-settled principle that no reference need be made to other Acts where the term is defined under the Act. Further "when the words of the statute are clear, plain or unambiguous i.e. they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequence". These words themselves convey the intent of legislation. The expression "registered consumer association" as defined under Section 2(n) of the Act reads as under : Section 2. "In this Act, unless the context otherwise requires.- (n) "registered consumers" association" means a voluntary association of persons registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force which is formed for the purpose of protecting the interests of consumers generally and is recognised by the Central Government as such association on an application made in this behalf in such form and such manner as may be prescribed."

5. IT is clear that the definition is couched in plain, clear and unambiguous words. No reference need be made to the other Acts as argued on behalf of the applicant. The expression "and" has to be read as conjunctive and not disjunctive. As per Section 2(n) of the Act there are two categories of associations which have been recognised - one are those who are registered under the Companies Act, 1956 and the other who have been formed for the protection of common interest of consumers and the same is recognised by the Central Government as such association. The recognition to be accorded is on an application made in this behalf in such form and such manner as may be prescribed. Fulfilments of these conditions are necessary for an association to fall under the definition of "registered consumers association" under Section 2(n) of the Act. In this context it is found that the association has been formed voluntarily by the allottees of Vaishali Apartments to pursue the common interest which is to protect themselves from delay in completion of flats and escalation in price of the same. Thus broadly the allottees are set to have common interest. IT is however found that the association has not been recognised by the Central Government though an application to this effect has been made in the form and in a manner as prescribed under the Rule 3 (Recognition of Consumer Association) Rules, 1987. The application of the Association stands rejected on the ground of lack of experience in handling consumers, problems and the activities of the Association being confined to settlement of GDA allotment related cases. The order is dated 5th April, 1999. Therefore, at present technically speaking the case of the applicant is not covered under the definition as given in Section 2(n) of the Act. In my views I am also supported by the decision of the Commission of National Consumer Protection Council v. Madhur Food Products Ltd. (supra). The decision in the case of Orissa Lift Irrigation

Corpn. Ltd. & Ors. v. Birakishore Rout & Ors., has been rendered on the interpretation of the provisions of Sections 2(i)(b) and 2(i)(d) and 2(i)(m) of the Consumer Protection Act. There is no definition of "registered consumers association" under the Consumer Protection Act as is the case under the MRTP Act. In the circumstances the order passed in the case of Madhur Food Products Ltd. has to be followed. As regards reliance placed on Regulation 57 of the MRTPC Regulations, 1991 the same reads as under : Persons having common interest (1) Where there are a number of persons having common interest, whether as complainants, respondents or as parties who are served with notice under Regulations 50, 53, 54 or 55, the Commission may, by order, direct that any particular complaint, respondent or party shall appear in the proceedings on behalf of or for the benefit of all persons, having common interest and the Commission shall, in such a case, give notice of proceedings to all such persons having common interest either by personal service, or, where the persons to be served are in large numbers, or for any other cause such personal service is not reasonably practicable, by public advertisement, as the Commissioner may in each case direct. (2) xxx xxx xxx (3) xxx xxx xxx Under the present Regulation it is necessary that the persons were served with notice under Regulations 50, 53, 54 or 55 on the complaint as filed. IT is only in such circumstances that the Commission can direct that any particular complaint or party shall appear in the proceedings on behalf of or for the benefit of all persons having common interest. In the present case, it has not been shown that the pre-requisite conditions are mentioned in Regulation has been satisfied. In such circumstances, the complainant's case cannot be covered under the aforesaid Regulation of MRTPC Regulations, 1991. On the facts as mentioned above I hold that the proceedings in the complaint are not maintainable. This is however with the observation that the complainant is at liberty to file another complaint on behalf of the allottees of Vaishali Apartments in case its Association comes to be recognised by the Government. In the result, the complaint fails on account of its non-maintainability and it is hereby rejected. No order as to costs. Complaint dismissed.