
(2016) 12 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

Case No : 1895 of 2016

SARITA C. SINGH & ORS.

APPELLANT

Vs

VXL REALTORS PVT. LTD. & ANR.

RESPONDENT

Date of Decision : 06-12-2016

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 12\(1\)\(c\)](#) - Manner in which complaint shall be made.

Citation : (2016) 12 NCDRC CK 0029

Hon'ble Judges : Ajit Bharihoke, S.M. Kantikar, Member

Advocate : Upma Shrivastava

Judgement

1. Instant complaint has been filed by 37 complainants who had booked flats in development project undertaken by the opposite parties on the ground of deficiency in service. The complainants have sought following reliefs: -

1. "direct the opposite party to hand over the legal possession of the flats to all the complainants;

2. direct the opposite party to register the sale deed in favour of complainants after all the legal compliances including payment of all dues to Awas Vikas Parishad

3. direct the Opposite Parties to pay to the complainants Rs. 45,00,000,00/- (rupees forty five crores only) along with interest @ 18% p.a. as cost for payment of debts of Awas Vikas Parishad and completion of above stated project, so that sale deed be executed in favour of flat owners after getting the completion certificate from U.P. Awas Vikas.

4. direct the Opposite Parties to pay to the Complainant Rs. 20,00,000,00/- (rupees twenty crores only) for deficiency in services and for the losses suffered by them due to delay in project, poor construction quality, and financial loss such as income tax rebate is not available despite full payment, forced to live on rent and to pay EMI on bank loans etc.

5. direct the Opposite Parties to pay each of Complainant Rs. 10,00,000/- (rupees ten lakhs only) for mental agony/harassment suffered by them due to builder's fault.

6. direct the Opposite Parties to pay to the Complainant Rs. 2,00,000/- (rupees two lakhs only) towards the cost of legal expenses; and

7. pass any other order/orders which this Hon"ble Forum may deem fit in the facts and circumstances of the case."

2. As this complaint has been filed by more than one consumers, Section 12 (1) (c) of the Consumer Protection Act, 1986 comes into play, which 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 -

(a)

(b)

(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"

3. On our query, learned counsel has submitted that apart from 37 complainants, there are almost more than 100 other allottees who are similarly placed. However, perusal of prayer clause would show that the relief has not been claimed for other similarly placed persons. The interpretation and scope of Section 12 (1) (c) of the Act was the subject matter of adjudication before Larger Bench of this Commission in consumer complaint No.97/2016 in the matter of of Ambrish Kumar Shukla & Ors. vs. Ferrous Infrastructure Pvt. Ltd . 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."

4. On reading of the above, it is clear that permission under Section 12 (1) (c) of the Act can be granted to more than one consumers to pursue a joint complaint if the complaint is in the nature of class action in which the relief has been sought also on behalf of other consumers who would be so interested in the subject matter of the complaint. Perusal of prayer clause in the instant complaint would show that complainants have claimed relief for themselves only. Therefore, permission under Section 12 (1) (c) cannot be granted. As a consequence joint complaint cannot proceed.

5. In view of the discussion above, complaint is rejected with the observation that the complainant may file fresh complaint in proper form before the appropriate Fora on the same cause of action.