
(2015) 05 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

Case No : 153 of 2010

Sobha Hibiscus Condominium

APPELLANT

Vs

Shobha Developers Ltd

RESPONDENT

Date of Decision : 13-05-2015

Acts Referred:

Citation : 2015 2 CPR 797

Hon'ble Judges : V.K.JAIN , B.C.Gupta J.

Advocate : RAJESH MAHALE , KARANJIT SINGH , A.N.HAKSAR , SHAILESH MADIYAL , Chitra Y.Parande

Judgement

1. THIS complaint has been filed by a condominium consisting of the owners of the apartments in a multistoried building namely Sobha Hibiscus situated at Ambalipura Village, Varthur Hobli, South Bangalore Taluk. The aforesaid condominium has come into existence pursuant to a declaration alleged to have been executed by the opposite parties under the provisions of Karnataka Apartments Ownership Act, 1972, and is not required under any law.

2. THE complaint has been resisted by the opposite party which has taken a preliminary objection that the complainant is not a consumer within the meaning of Consumer Protection Act and, therefore, has no locus standi to file this complaint.

3. SECTION 12(1) of the Consumer Protection Act which is relevant to decide the question as to whether the complainant is competent to maintain this complaint or not, reads as under: "12. 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) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;

(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;

(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; or

(d) the Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general."

It is evident from a perusal of the aforesaid provision that a complaint can be instituted by (i) the consumer to whom the services are provided or agreed to be provided (ii) any recognized consumer association (iii) one or more consumers where there are numerous consumers having the same interest, provided permission of the consumer forum is taken and (iv) the Central Government or the State Government as the case may be. The explanation attached to Section 12 provides that recognized consumer association means any voluntary consumer association registered under the Companies Act or any other law for the time being in force. The complainant before us is not a recognized consumer association since it is not registered under the Companies Act or any other law for the time being in force such as Societies Registration Act. Therefore, the only question is whether the complainant condominium can be said to be a consumer within the meaning of the Consumer Protection Act. The expression consumer has been defined in Section 2(1) (d) of the Consumer Protection Act inter alia to mean any person who hires or avails any services for a consideration which has been paid or promised or partly paid and partly promised and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised or partly paid or partly promised when such services are availed of with the approval of the first mentioned person. In our opinion, it is only the apartment owners who can be said to be the consumers of the opposite party since the services of the opposite party for construction of houses for them were availed by them. The condominium which came to be formed on account of a declaration made by the opposite party did not hire or avail the services of the opposite party nor did it pay any consideration to the said opposite party. Therefore, for individual grievances any apartment purchaser could have approached this Commission by way of a complaint. In a case the grievance of the apartment owners was common, which appears to be a case before us, the complaint could be instituted by one or more apartment owner since, all of them would have the same interest in the subject matter of the complaint, provided permission of the Commission in terms of Section 12 (1)(c) sought. Therefore, we are of the view that the complainant condominium has no locus standi to institute this complaint since neither it is a consumer nor it is a recognized consumer association within the meaning of Section 12 of the Consumer Protection Act, 1986. We, therefore, reject this complaint. We, however, make it clear that the dismissal of this complaint does

not come in the way of the one or more apartment owners instituting a complaint for the redressal of the grievances stated in this complaint. If and when any such complaint is filed it shall be open to the opposite party to resist the same on all such grounds as may be available to them in law.

4. DURING the course of hearing the learned counsel for the complainant referred to Section 23 of the Karnataka Apartments Owners Act which, to the extent it is relevant, provides that actions may be brought by the Manger or the Board of Managers, on behalf of two or more of the apartment owners as their respective interest may appear with respect to any cause of action relating to the common areas and facilities or more than one apartment. It is pointed out by the learned counsel for the opposite party that in their rejoinder the complainant has clearly stated in para 8 of the rejoinder that the prayer made in the complaint and the averment regarding deficiency in the services is not based on the Karnataka Apartment Ownership Act and hence the application of the said act is immaterial for grant of relief in this complaint. Even otherwise, the locus standi of the complainant is to adjudicated in the light of the provisions contained in the Consumer Protection Act which in our opinion does not enable the complainant condominium to maintain this complaint.