

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 97 OF 2016

1. AMBRISH KUMAR SHUKLA & 21 ORS.
H. No. 412, 1st Floor, Sector -6, Bahadurgarh
Jhajjar
Haryana - 124 507

.....Complainant(s)

Versus

1. FERROUS INFRASTRUCTURE PVT. LTD.
SETH FARMS, KHASRA NO. 41,42,44,45, MEHRAULI, GURGAON ROAD,
GHITORNI, NEW DELHI-110030

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE D.K. JAIN,PRESIDENT
HON'BLE MR. JUSTICE V.K. JAIN,MEMBER
HON'BLE DR. B.C. GUPTA,MEMBER**

For the Complainant :

Mr. Uttam Datt, Advocate
Mr. Tarun Sharma, Advocate

For the Opp.Party :

Mr. K.V. Girish Chowdary, Advocate

Dated : 07 Oct 2016

ORDER

JUSTICE V.K. JAIN, MEMBER

Vide order dated 24.05.2016, passed in CC No. 97 of 2016, the following issues relating to the interpretation of Section 12(1)(c) of the Consumer Protection Act were referred, by a two members Bench of this Commission, to a larger Bench for its decision:

- (i) Whether a complaint under Section 12(1)(c) of the Consumer Protection Act filed on behalf of or for the benefit of only some of the numerous consumers having a common interest or a common grievance is maintainable or it must necessarily be filed on behalf of or for the benefit of all the consumers having a common interest or a common grievance against same person (s);
- (ii) Whether a complaint under Section 12(1)(c) of the Consumer Protection Act is maintainable, before this Commission, where the value of the goods or services and compensation, if any, claimed in respect of none of the allottees / purchasers exceeds Rupees one crore.

(iii) Whether a complaint under Section 12(1)(c) of the Consumer Protection Act is maintainable before this Commission, where the value of the goods or services and the compensation claimed in respect of an individual allottee exceeds Rupees one crore in the case of one or more allottees but does not exceed Rupees one crore in respect of other allottees;

(iv) Whether a complaint under Section 12(1)(c) of the Consumer Protection Act is maintainable, in a case of allotment of several flats in a project / building, where the allotments / bookings / purchases are made on different dates and or the agreed cost of the flat and / or the area of the flat is not identical in all the bookings / allotments / purchases.

2. Vide order dated 11.08.2016, passed in First Appeal No. 166 of 2016, First Appeal No. 504 of 2016 and First Appeal No. 505 of 2016, the following issues were referred, by a single Member Bench of this Commission to the larger Bench:

(i) In a situation, where the possession of a housing unit has already been delivered to the complainants and may be, sale deeds etc. also executed, but some deficiencies are pointed out in the construction/ development of the property, whether the pecuniary jurisdiction is to be determined, taking the value of such property as a whole, OR the extent of deficiency alleged is to be considered for the purpose of determining such pecuniary jurisdiction.

(ii) Whether the interest claimed on such value by way of compensation or otherwise, is to be taken into account for determining the pecuniary jurisdiction of a particular consumer forum.

(iii) Whether “the value of the goods or services and compensation, if any, claimed” is to be taken as per the original value of such goods, or service at the time of purchase of such goods or hiring or availing of such service, OR such value is to be taken at the time of filing the claim, in question.

(iv) In complaints proposed to be filed under section 12(1)(c) of the Act with the permission of Consumer Forum, whether the pecuniary jurisdiction is to be determined taking the value of goods or service for individual consumer, OR the aggregate value of the properties of all consumers getting together to file the consumer complaint is to be taken into consideration.

(v) For filing the consumer complaints u/s 12(1)(c), whether a group of cooperative societies could join hands to file a joint complaint?

(vi) Whether the term ‘consumer’ given in section 12(1)(c) includes the term ‘Person’ as defined in section 2(m) of the Act, meaning thereby that groups of firms, societies, association, etc. could join hands to file the joint complaints, u/s 12(1)(c) of the Act.

(vii) Many a time, it is seen that more than one joint complaint are already pending in respect of one particular housing project. There is a view that while applying section 12(1)(c) of the Act, only one of these complaints should be allowed to continue as a lead case, and all other complaints should be dismissed and the parties in these dismissed complaints should be directed to become parties in the lead case. Whether the above view is correct, OR in such cases, all complaints should be clubbed and heard together.

3. In First Appeal No. 644 of 2015, the complainant booked an apartment with respondent no. 1. The allotment was cancelled by the respondent on account of non-payment of the balance sale consideration. Being aggrieved, the complainant approached the concerned District Forum by way of a complaint, seeking restoration of the flat with possession and compensation. The respondent contested the complaint and took a preliminary objection that the District Forum did not possess the requisite pecuniary jurisdiction to entertain the complaint. The District Forum vide its order dated 22.01.2013, noticing that the price of the apartment was Rs.46,02,653/-, held that the said Forum had no pecuniary jurisdiction to entertain the

complaint. The appellant then approached the concerned State Commission by way of a fresh Consumer Complaint. The State Commission however, took the view that if the grievance pertains to a deficiency in service, the complainant has to assess the deficiency in the service availed by him and the value of the flat is not to be taken into consideration while deciding whether the said Commission had pecuniary jurisdiction to hear the complaint or not. Noticing that the complainant had claimed Rs.10,00,000/- as compensation, the complaint was dismissed. Being aggrieved, the complainant has approached this Commission by way of the aforesaid appeal.

Vide order dated 11.03.2016, passed in the aforesaid appeal, Bench No.1 of this Commission, noticing a divergence of opinion amongst various Benches of this Commission, on the issue of pecuniary jurisdiction, referred the said issue raised in the aforesaid appeal, to a larger Bench. The aforesaid issue however, is subsumed in issue no. 1 referred to the larger Bench in First Appeal No. 166 of 2016.

4. Section 12(1) of the Consumer Protection Act reads as under:

(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 recognized 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 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.

5. Section 13(6) of the Consumer Protection Act reads as under:

(6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.

Section 2(1)(b) of the Consumer Protection Act reads as under:

(b) “complainant” means—

(i) a consumer; or

(ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or

(iii) the Central Government or any State Government; or

- (iv) one or more consumers, where there are numerous consumers having the same interest;
- (v) in case of death of a consumer, his legal heir or representative;] who or which makes a complaint;

6. Order I of Rule 8 of the Code of Civil Procedure which finds reference in Section 13(6) of the Consumer Protection Act, reads as under:

8. One person may sue or defend on behalf of all in same interest.- (1) Where there are numerous persons having the same interest in one suit,—

(a) one or more of such persons may, with the permission of the court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under sub-rule (1), may apply to the court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3) of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the court has given, at the plaintiff's expenses notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

7. Section 12(1) (c) of the Consumer Protection Act when read with Order I Rule 8 of the Code of the Civil Procedure will apply if (i) the consumers are numerous (ii) They have the same interest (iii) the necessary permission of the Consumer Forum is obtained and (iv) notice in terms of Sub-rule (2) of Rule 8 of Order I is given. It however, is not necessary that the cause of action available to all the consumers should also be the same. What is required is sameness of the interest and not the same cause of action.

8. The scope and object of the principle embodied in Rule 8 of Order I of Code of Civil Procedure was stated as under by a Four-Members Bench of this Commission in **Anil Textorium Pvt. Ltd. Vs. Rajiv Niranjnabhai Mehta, III (1997) CPJ 31 (NC)**:

“6. ...The principle admitted in all Courts / Tribunals/Quasi-Judicial Authorities upon questions affecting the suitor's person and his liberty and his property is that the rights of no man shall be decided unless he himself is present. Therefore, all persons having an interest in the subject-matter are to be made parties in a suit or other proceedings but the provisions of Order I Rule 8 of the Code of Civil Procedure

has carved out an exception. It provides that where a number of persons are similarly interested in a suit one or more of them can with the permission of the Court or on a direction given by the Court, sue or be sued on behalf of themselves and others. The provisions of this rule have been included in the Code in public interest to avoid multiplicity of litigation and to facilitate the decision on questions; in which a large number of persons are interested, without recourse to the ordinary procedure. These provisions are meant for the benefit and protection of the persons who have the same interest as one who has filed the suit. The exception is adopted by the Courts to avoid inconvenience, because if all persons interested are made parties, there would be considerable delay and justice would be hampered.

..... It is the existence of a sufficient community of interest among the persons on whose behalf or against whom the suit is instituted that should be the governing factor in deciding as to whether the procedure provided in the representative suit should be adopted or not”.

8. *The complainants can be one or more consumers, where there are numerous consumers having the same interest. The interest must be common to them all or they must have a common grievance which they seek to get redressed.*

..... Where all the consumers jointly interested are made parties to the complaint, it is not a representative complaint in the strict sense of the provisions of Order I Rule 8 and no permission is necessary”.

9. *The obtaining of a quasi-judicial permission is an essential condition for binding those consumers other than those actually parties to the complaint. The Consumer FORA have to exercise a judicial discretion in granting permission to a complainant to sue in a representative capacity having regard to the nature of the complaint and the reliefs sought”.*

9. In **The Chairman, Tamil Nadu Housing Board, Madras Vs. T.N. Ganapathy, Civil Appeal No. 3002 of 1983 decided on 07.02.1990**, a number of persons, including the respondent before the Hon'ble Supreme Court, were allotted residential plots by Tamil Nadu Housing Board at a tentative price. After more than ten years, fresh demands were made by the Board, threatening dispossession of the allottees in case of non-payment of the said demand. A suit was then filed by the respondent, who claimed to be representing all the allottees, on the ground that the cases of all of them were identical. The suit was contested, inter-alia on the ground that a suit in a representative capacity under Order 1 Rule 8 of the Code of Civil Procedure was not maintainable. The Trial Court and First Appellate Court upheld the maintainability of the suit but dismissed the same on merit. The High Court however, reversed the said decisions and decreed the suit. Being aggrieved, the Board approached the Hon'ble Supreme Court by way of a Special Leave Petition. On the maintainability of the Suit, it was contended on behalf of the appellant that since the injury complained was in respect of separate demand of money against each of the allottees, giving rise to different causes of action, the said provision was not applicable. It was emphasized that those, who had been served with the additional demand were interested in defeating only the demand individually referable to each of them. It was also contended that each one of the allottees was not interested in what happens to the others and therefore, the allottees should file separate suits. The contention however, did not find favour with the Hon'ble Supreme Court, which inter-alia observed and held as under:

“We do not find any merit in the argument. The provisions of Order 1 of Rule 8 have been included in the Code in the public interest so as to avoid multiplicity of litigation. The condition necessary for application of the provisions is that the persons on whose behalf the suit is being brought must have the same interest. In other words either the interest must be common or they must have a common grievance which they seek to get redressed. In Kodia Goundar vs. Velandi Goundar, ILR 1955 Mad. 339, a Full Bench of the Madras High Court observed that on the plain language of Order 1, Rule 8, the principal requirement to bring a suit within that Rule is the sameness of interest of the numerous person on whose behalf or for whose benefit the suit is instituted. The Court, while considering whether leave under the Rule should be granted or not, should examine whether there is sufficient community of interest to justify the adoption of the procedure provided under the

Rule. The object for which this provision is enacted is really to facilitate the decision of questions, in which a large number of persons are interested, without recourse to the ordinary procedure. The provision must, therefore, receive an interpretation which will subserve the object for its enactment. There is no words in the Rule to limit its scope to any particular category of suits or to exclude a suit in regard to a claim for money or for injunction as the present one”.

“It is true that each of the allottees is interested individually in fighting out the demand separately made or going to be made on him and, thus, separate causes of action arise in the case, but, that does not make Order 1, Rule 8 inapplicable. Earlier there was some doubt about the Rule covering such a case which now stands clarified by the Explanation introduced by the CPC (Amendment) Act, 1976, which reads as follows:

Explanation – For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.

The objects and reasons for the amendment were stated below:

OBJECTS AND REASONS: Clause 55; Sub-Clause (iv), - Rule 8 of Order 1 deals with representative suits. Under this rule, where there are numerous persons having the same interest in one suit, one or more of them may, with permission of the Court, sue or be sued, on behalf of all of them. The rule has created a doubt as to whether the party representing others should have the same cause of action as the persons represented by him. The rule is being substituted by a new rule and an explanation is being added to clarify that such persons need not have the same cause of action.

There is, therefore, no doubt that the persons who may be represented in a suit under Order 1, Rule 8 need not have the same cause of action. The trial court in the present case was right in permitting the respondent to sue on behalf of all the allottees of Ashok Nagar”.

10. Since by virtue of Section 13(6) of the Consumer Protection Act, the provisions of the Order 1 Rule 8 of CPC apply to the consumer complaints filed by one or more consumers where there are numerous consumers having the same interest, the decision of the Hon’ble Supreme Court in Tamil Nadu Housing Board (supra) would squarely apply, while answering the reference. The purpose of giving a statutory recognition to such a complaint being to avoid the multiplicity of litigation, the effort should be to give an interpretation which would sub serve the said objective, by reducing the increasing inflow of the consumer complaints to the Consumer Forums. The reduction in the number of consumer complaints will be cost effective not only for the consumers but also for the service provider.

11. **Reference dated 24.5.2016**

Issue No. (i)

As held by the Hon’ble Supreme Court in Tamil Nadu Housing Board (supra), the interest of the persons on whose behalf the claim is brought must be common or they must have a common grievance which they seek to get addressed. The defect or deficiency in the goods purchased, or the services hired or availed of by them should be the same for all the consumers on whose behalf or for whose benefit the complaint is filed. Therefore, the oneness of the interest is akin to a common grievance against the same person. If, for instance, a number of flats or plots in a project are sold by a builder / developer to a number of persons, he fails to deliver possession of the said flats/plots within the time frame promised by him, and a

complaint is filed by one or more such persons, either seeking delivery of possession of flats / plots purchased by them and other purchasers in the said project, or refund of the money paid by them and the other purchasers to the developer / builder is sought, the grievance of such persons being common i.e. the failure of the builder / developer to deliver timely possession of the flats/plots sold to them, they would have same interest in the subject matter of the complaint and sufficient community of interest to justify the adoption of the procedure prescribed in Order 1 Rule 8 of the Code of Civil Procedure, provided that the complaint is filed on behalf of or for the benefit of all the persons having a common grievance against the same developer / builder, and identical relief is sought for all such consumers.

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.

Sub rule (2) of Rule 8 of Order I of the Code of Civil Procedure mandates the Court to give notice of the institution of the suit /complaint to all the persons “so interested”, meaning thereby to the persons having the same interest, i.e. a common grievance, on whose behalf or for whose benefit the complaint is instituted. Notice can be either by way of personal service or where personal service is not reasonably practicable, by way of a public advertisement. The aforesaid provision clearly envisages institution of a suit / complaint on behalf of or for the benefit of not only those who approach the Court/Forum but also on behalf of or for the benefit of the persons other than the plaintiffs / complainants, but having the same grievance. Had the Legislative intent been to permit such a complaint only on behalf of the persons deciding to approach the Court/ Forum, there could be no occasion for requiring the service of notice in the aforesaid manner, since there can be no question of serving any notice on those who are already before the Court/Forum.

Sub Rule (5) of Rule 8 of Order I enables the Court to substitute the name of any person having same interest in the suit as plaintiff where it finds that the person suing the suit is not proceeding with due diligence in the suit. The aforesaid power given to the Court also indicates that a suit in terms of order 1 Rule 8 of the Code of Civil Procedure commonly termed as a class suit is intended on behalf of or for the benefit of all the persons having a common grievance against the same party and seeking the same relief not on behalf of or for the benefit of only some of them.

12. **Issue No. (ii) and (iii)**

Section 21 of the Consumer Protection Act, to the extent it is relevant provides that this Commission shall have jurisdiction to entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds Rs.1.00 crore. Therefore, what has to be seen, for the purpose of determining the pecuniary jurisdiction, is the value of the goods or services and the amount of the compensation claimed in the complaint. If the aggregate of (i) the value of the goods or services and (ii) the compensation claimed in the complaint exceeds Rs.1.00 crore, this Commission would have pecuniary jurisdiction to entertain the complaint. Similarly, if the aggregate of the value of (i) the goods or services and (ii)

compensation, if any, claimed in the complaint exceeds Rs.20.00 lacs but does not exceed Rs.1.00 Crore, the State Commission would have the pecuniary jurisdiction to entertain the complaint. Since a complaint under Section 12(1)(c) of the Consumer Protection Act can be filed only where there are numerous consumers having the same interest and it has to be filed on behalf of or for the benefit of all the consumers so interested i.e. all of the numerous consumers having the same interest, it is the aggregate of the value of the goods purchased or services hired or availed of, by all those numerous consumers and the total compensation, if any, claimed for all those numerous consumers, which would determine the pecuniary jurisdiction of this Commission. If the aggregate of the value of the goods purchased or the services hired or availed of by all the consumers having the same interest and the total compensation, if any, claimed for all of them comes to more than Rs.1.00 crore, the pecuniary jurisdiction would rest with this Commission alone. The value of the goods purchased or the services hired or availed of and the quantum of compensation, if any, claimed in respect of the one individual consumer therefore, would be absolutely irrelevant for the purpose of determining the pecuniary jurisdiction in such a complaint. In fact, this issue is no more *res Integra* in view of the decision of a Four-Members Bench of this Commission in **Public Health Engineering Department Vs. Upphokta Sanrakshan Samiti I (1992) CPJ 182 (NC)**. In the above referred case, a complaint was preferred, seeking to recover compensation for alleged negligence on the part of the petitioner which had resulted in a large number of persons getting infected by Jaundice. The names of 46 such persons were mentioned in the complaint but it was alleged that there were thousands of other sufferers who were similarly placed and that complaint was filed on behalf of all of them. The complainant had sought compensation of Rs.20,000/- for every student victim, Rs.10,000/- for every general victim and Rs.1,00,000/- for the legal representatives of those who had died due to Jaundice. The District Forum held that it had no pecuniary jurisdiction to adjudicate upon the complaint. The State Commission took the view that the District Forum has to go by the value as specified for each consumer. Rejecting the view taken by the State Commission, this Commission inter-alia held as under:

“5. In our opinion this proposition is clearly wrong since under the terms of Section 11 of the Act the pecuniary jurisdiction of the District Forum would depend upon the quantum of compensation claimed in the petition. The view expressed by the State Commission is not based on a correct understanding or interpretation of Section 11. On the plain words used in Section 11 of the Act, the aggregate quantum of compensation claimed in the petition will determine the question of jurisdiction and when the complaint is filed in a representative capacity on behalf of several persons, as in the present case, the total amount of compensation claimed by the representative body on behalf of all the persons whom it represents will govern the valuation of the complaint petition for purposes of jurisdiction”.

6. The quantum of compensation claimed in the petition being far in excess of Rs.1.00 lac the District Forum was perfectly right in holding that it had no jurisdiction to adjudicate upon the complaint. The reversal of the said order by the State Commission was contrary to law”.

Therefore, irrespective of the value of the goods purchased or the service hired and availed of by an individual purchaser / allottee and the compensation claimed in respect of an individual purchaser / allottee, this Commission would have the pecuniary jurisdiction to entertain the complaint if the aggregate of the value of the goods purchased or the services hired or availed of by the numerous consumers on whose behalf or for whose benefit the complaint is filed and the total compensation claimed for all of them exceeds Rs.1.00 crore.

Issue No. (iv)

13. As noted earlier, what is required for the applicability of Section 12(1)(c) of the Consumer Protection Act read with Order I Rule 8 of the Code of Civil Procedure is the sameness of the interest i.e. a common grievance of numerous persons which is sought to get redressed through a representative action. Therefore, so long as the grievance of the consumers is common and identical relief is claimed for all of them, the cost, size, area of the flat / plot and the date of booking / allotment / purchase, would be wholly immaterial. For instance, if a builder / developer has sold 100

flats in a project out of which 25 are three-bed room flats, 25 are two-bed room flats and 50 are one-bed room flats and he has failed to deliver timely possession of those flats, all the allottees irrespective of size of their respective flats / plots, the date of their respective purchase and the cost agreed to be paid by them have a common grievance i.e. the failure of the builder/ developer to deliver possession of the flat / plot sold to them and a complaint filed for the benefit of or on behalf of all such consumers and claiming same relief for all of them, would be maintainable under Section 12(1)(c) of the Consumer Protection Act. The relief claimed will be the same / identical if for instance, in a case of failure of the builder to deliver timely possession, refund, or possession or in the alternative refund with or without compensation is claimed for all of them. Different reliefs for one or more of the consumers on whose behalf or for whose benefit the complaint is filed cannot be claimed in such a complaint.

14. **Reference order dated 11.8.2016**

Issue No. (i)

It is evident from a bare perusal of Sections 21, 17 and 11 of the Consumer Protection Act that it's the value of the goods or services and the compensation, if any, claimed which determines the pecuniary jurisdiction of the Consumer Forum. The Act does not envisage determination of the pecuniary jurisdiction based upon the cost of removing the deficiencies in the goods purchased or the services to be rendered to the consumer. Therefore, the cost of removing the defects or deficiencies in the goods or the services would have no bearing on the determination of the pecuniary jurisdiction. If the aggregate of the value of the goods purchased or the services hired or availed of by a consumer, when added to the compensation, if any, claimed in the complaint by him, exceeds Rs. 1.00 crore, it is this Commission alone which would have the pecuniary jurisdiction to entertain the complaint. For instance if a person purchases a machine for more than Rs.1.00 crore, a manufacturing defect is found in the machine and the cost of removing the said defect is Rs.10.00 lacs, it is the aggregate of the sale consideration paid by the consumer for the machine and compensation, if any, claimed in the complaint which would determine the pecuniary jurisdiction of the Consumer Forum. Similarly, if for instance, a house is sold for more than Rs.1.00 crore, certain defects are found in the house, and the cost of removing those defects is Rs.5.00 lacs, the complaint would have to be filed before this Commission, the value of the services itself being more than Rs.1.00 crore.

Issue No. (ii)

In Ghaziabad Development Authority Vs. Balbir Singh (2004) 5 SCC 65, the Hon'ble Supreme Court inter-alia observed and held as under:

“However the power to and duty to award compensation does not mean that irrespective of facts of the case compensation can be awarded in all matters at a uniform rate of 18% per annum. As seen above what is being awarded is compensation i.e. recompense for the loss or injury.

... Along with recompensing the loss the Commission / Forum may also compensate for harassment / injury both mental and physical. Similarly, compensation can be given if after allotment is made there has been cancellation of scheme without any justifiable cause.

That compensation cannot be uniform and can best of illustrated by considering case where possession is being directed to be delivered and cases where only monies are directed to be returned. In cases where possession is being directed to be delivered the compensation for harassment will necessarily have to be less because in a way that party is being compensated by increase in the value of the property he is getting. But in cases where monies are being simply returned then the party is suffering a loss inasmuch as he had deposited the money in the hope of getting a flat / plot. He is being deprived of that flat / plot. He has been deprived of the benefit of escalation of the price of that flat / plot. Therefore, the compensation in such cases would necessarily have to be higher”.

The Hon'ble Supreme Court thus recognized that the interest to the flat buyers is paid by way of compensation. In fact, though the Consumer Protection Act, authorises the Consumer Forum to award compensation, no specific powers to award interest has been conferred upon it. Therefore, in view of the provisions contained in Sections 21, 17 and 11 of the Consumer Protection Act, the amount of the interest, which can be paid as compensation, must necessarily be taken into account for determining the pecuniary jurisdiction.

Issue No. (iii)

Conflicting orders have been passed by the Benches of this Commission as to cut off date for determining the value of the goods or the services, as the case may be, in terms of Section 21, 17 and 11 of the Consumer Protection Act. One view is that the value of the goods or services means the consideration agreed to be paid by the consumer for the goods purchased or the services hired and availed of, whereas the other view is that the value of the goods or services as the case may be, for the purpose of determining the pecuniary jurisdiction of the Consumer Forum should be the market value of the goods or services on the date of institution of the consumer complaint. Though, the use of the word "value" in the above referred Sections, tends to suggest that it is the market price of the goods or the services, as the case may be, which when added to the amount of compensation, if any, claimed in the complaint, should determine the pecuniary jurisdiction of the Consumer Forum, on a deeper consideration we are of the view that it is the price of the goods or the services as the case may be agreed to be paid by the consumer which would be relevant for the purpose of determining the pecuniary jurisdiction. If the market price of the goods or the services as the case may be, on the date of institution of the complaint is to determine the pecuniary jurisdiction, the market price being dynamic and ever fluctuating, this would create an unending uncertainty with respect to the Consumer Forum before which the complaint is to be instituted. For instance, if there are 10 flat buyers in the same project, identical consideration is agreed to be paid by them to the service provider, one of them decides to approach the Consumer Forum at a time when the prevailing market value of the flat is more than Rs.1.00 crore, the complaint will have to be instituted before this Commission. If the prevailing market value of the flat at the time when another flat buyer who agreed to pay the same consideration to the service provider decides to approach the Consumer Forum is less than Rs.1.00 crore, he will have to approach the concerned State Commission. Therefore, there will be two separate Forums dealing with the complaints of these two consumers who agreed to pay same price for the flat purchased by them. In one case, the order passed in the consumer complaint would be challenged before the Hon'ble Supreme Court whereas in the other case, it would be challenged before this Commission. Creating such an anomalous situation, in our view, could not have been the legislative intent.

Moreover, if the pecuniary jurisdiction of the Consumer Forum varies with the market price of the goods or services at the time the complaint is instituted; there is a likelihood of the valuation given by the complainant, being seriously challenged by the opposite party. If this happens, the Consumer Forum will first have to determine the market price of the goods or services as the case may be, at the time of institution of the complaint. Such a determination is likely to be a time consuming process, besides being incapable of determination by way of a summary procedure, which the Consumer Forums are adopting. Such an interpretation therefore, is likely to be counterproductive and result in an inordinate delay in the disposal of the consumer complaint. On the other hand, no such difficulty is likely to arise if the sale consideration agreed to be paid by the consumer is taken as the value of the goods or services. In that case, the amount of compensation as claimed in the complaint needs to be added to the agreed consideration and the aggregate of the consideration and the compensation claimed in the complaint would determine the pecuniary jurisdiction of the Consumer Forum.

Issue No. (iv)

In view of the answer to the issues No. (ii) and (iii) of the reference order dated 24.5.2016, it is the aggregate value of the goods purchased or the services hired or availed of by all the consumers on whose behalf or for whose benefit the complaint is filed which, added to the total amount of compensation, if any, claimed for all such consumers determines the pecuniary jurisdiction of the Consumer Forum. The value of the goods

purchased or the services hired or availed of by an individual consumer and the compensation claimed in respect of an individual consumer would have no bearing on such determination.

Issue No. (v) and (vi)

It is evident from a bare perusal of Section 12(1)(c) of the Consumer Protection Act that a complaint under the aforesaid provision can be filed only by one or more consumers. The term 'consumer' has been defined in Section 2(1)(d) of the Consumer Protection Act to mean any person who buys any goods for a consideration or who hires or avails of any services for a consideration and includes the user other than the purchaser of the goods and beneficiary other than the person hiring or availing of the services for consideration, with the permission of the person purchasing the goods or hiring or availing of the services, as the case may be. Therefore, a Cooperative Society or a group of Cooperative Societies is not entitled to file a complaint under Section 12(1)(c) of the Consumer Protection Act unless the cooperative society itself is a consumer as defined in Section 2(1)(d) of the Consumer Protection Act. Similarly, no group of Firms, Society or Association can file such a complaint unless such group of Firms, Society or Association itself is a consumer as defined in Section 2(1)(d) of the Consumer Protection Act. No person who does not qualify as a consumer in terms of Section 2(1)(d) of the Consumer Protection Act, can be party to a complaint under Section 12(1)(c) of the Act nor can he be amongst the persons on whose behalf or for whose benefit such a complaint is filed. In fact, a person who is not a consumer, as defined in Section 2(1)(d) of the Act, can invoke the jurisdiction of a Consumer Forum, by way of a consumer complaint.

Issue No. (vii)

As noted earlier, a complaint under Section 12(1)(c) of the Consumer Protection Act read with Order I Rule 8 of the Code of Civil Procedure can be filed where there are numerous consumers having the same interest i.e. a common grievance against the same person and the complaint is filed on behalf of or for the benefit of all such numerous consumers, and seeking same relief for all of them. Therefore, the Act does not envisage more than one complaints on behalf of such consumers, in a representative character. The decision in one complaint filed in a representative capacity will bind all the consumers on whose behalf or for whose benefit the complaint is filed, as provided in Order I Rule 8 (6) of the Code of Civil Procedure. Therefore, once a complaint, in a representative capacity is filed under Section 12(1)(c) of the Consumer Protection Act, and the requisite permission for filing such a complaint is given by the Consumer Forum, a second complaint, in a representative capacity under Section 12(1)(c) of the Consumer Protection Act would not be maintainable by or on behalf of consumers having the same interest and seeking the same relief and if filed, is liable to be dismissed with liberty to seek impleadment in the complaint already instituted in a representative capacity with the requisite permission of the Consumer Forum. Since a complaint in a representative capacity can be filed only on behalf of all the consumers having the same interest i.e. a common grievance and seeking the same relief against the same person, an individual complaint expressing such a grievance will not be maintainable and the only recourse available to a consumer having the same grievance is to seek impleadment in the complaint filed in the representative capacity. If such individual complaints are allowed even after the requisite permission in terms of Section 12(1)(c) is granted, that would be in contradiction of Order I Rule 8 (6) of the Code of Civil Procedure which makes an order passed in a suit / complaint filed in a representative capacity binding on all the persons on whose behalf or for whose benefit the suit / complaint is filed.

However, as far as the individual complaints instituted prior to grant of the requisite permission under Section 12(1)(c) of the Consumer Protection Act is concerned, they having been validly instituted, such complainants cannot be compelled to withdraw their individual complaint and become a party to the subsequently instituted complaint filed in a representative capacity. They having already taken recourse to the legal proceedings, the complaint instituted in a representative capacity, will not be deemed to have been instituted on behalf of or for the benefit of such complainants even if their grievance is identical to the grievance expressed in the complaint instituted in a representative character. They having already approached the Consumer Forum for the redressal of their grievance, it would be difficult to say that the complaint filed in a representative

character was intended on their behalf or for their benefit as well. In fact, there may be a consumer having an identical grievance, who has already approached the Consumer Forum by way of an individual complaint and whose complaint has already been adjudicated before the requisite permission under Section 12(1)(c) of the Consumer Protection Act is accorded in a complaint filed in a representative capacity. Since, there cannot be more than one adjudication in respect of the same grievance of the same person, it cannot be said that the complaint instituted in a representative capacity was filed on his behalf or for his benefit as well. Therefore, the consumers, who are already before the Consumer Forum when the requisite permission, in terms of Section 12(1)(c) of the Consumer Protection Act is accorded, will be out of the purview of the said complaint. Since it cannot be said that the complaint in the representative capacity was filed on their behalf or for their benefit as well, the order passed in such a complaint will not be binding on them. If however, such persons want to withdraw their pending complaints and join the complaint instituted in the representative capacity, there is no bar on their adopting such a course of action. The decision, of course, would rest with them whether to continue with the individual complaint already instituted by them or to withdraw the said complaint and become party to the complaint filed in a representative capacity.

In one of the written submissions, it is contended that since a complaint in a representative capacity can be filed only on behalf of all the consumer having the same interest, such a complaint will not be maintainable where one or more individual complaints, expressing such a grievance are already pending. We however, are unable to accept the contention. No such restriction finds place in Section 12(1)(c) of the Consumer Protection Act or in Order I Rule 8 of the Code of Civil Procedure. Accepting such a contention would defeat the very purpose of allowing such a suit/complaint since every consumer would be compelled to file an individual complaint leading to multiplicity of proceedings. Such an interpretation would not serve the cause either of the consumer or of the service provider.

15. For the reasons stated hereinabove, the references are answered as under:

Reference dated 24.5.2016

Issue No. (i)

A complaint under Section 12 (1)(c) of the Consumer Protection Act can be filed only on behalf of or for the benefit of all the consumers, having a common interest or a common grievance and seeking the same / identical relief against the same person. Such a complaint however, shall not be deemed to have been filed on behalf of or for the benefit of the consumers who have already filed individual complaints before the requisite permission in terms of Section 12(1)(c) of the Consumer Protection Act is accorded.

Issue No. (ii), (iii) and (iv)

A complaint under Section 12 (1)(c) of the Consumer Protection Act is maintainable before this Commission where the aggregate of the value of the goods purchased or the services hired or availed of by all the consumers on whose behalf or for whose benefit the complaint is instituted and the total compensation, if any, claimed in respect of all such consumers exceeds Rs.1.00 crore. The value of the goods purchased or the services hired and availed of by an individual consumer or the size, or date of booking / allotment / purchase of the flat would be wholly irrelevant in such a complaint where the complaint relates to the sale / allotment of several flats / plots in the same project / building.

Reference dated 11.8.2016

Issue No. (i)

It is the value of the goods or services, as the case may be, and not the value or cost of removing the deficiency in the service which is to be considered for the purpose of determining the pecuniary jurisdiction.

Issue No. (ii)

The interest has to be taken into account for the purpose of determining the pecuniary jurisdiction of a Consumer Forum.

Issue No. (iii)

The consideration paid or agreed to be paid by the consumer at the time of purchasing the goods or hiring or availing of the services, as the case may be, is to be considered, along with the compensation, if any, claimed in the complaint, to determine the pecuniary jurisdiction of a Consumer Forum.

Issue No. (iv)

In a complaint instituted under Section 12(1)(c) of the Consumer Protection Act, the pecuniary jurisdiction is to be determined on the basis of aggregate of the value of the goods purchased or the services hired or availed by all the consumers on whose behalf or for whose benefit the complaint is instituted and the total compensation claimed in respect of such consumers.

Issue No. (v) & (vi)

A complaint under Section 12(1)(c) of the Consumer Protection Act can be instituted only by one or more consumers, as defined in Section 2(1)(d) of the Consumer Protection Act. Therefore, a group of Cooperative societies, Firms, Association or other Society cannot file such a complaint unless such society etc. itself is a consumer as defined in the aforesaid provision.

Issue No. (vii)

More than one complaints under Section 12(1)(c) of the Consumer Protection Act are not maintainable on behalf of or for the benefit of consumers having the same interest i.e. a common grievance and seeking the same / identical against the same person. In case more than one such complaints have been instituted, it is only the complaint instituted first under Section 12(1)(c) of the Consumer Protection Act, with the requisite permission of the Consumer Forum, which can continue and the remaining complaints filed under Section 12(1)(c) of the Consumer Protection Act are liable to be dismissed with liberty to join in the complaint instituted first with the requisite permission of the Consumer Forum.

The individual complaints instituted before grant of the requisite permission under Section 12(1)(c) of the Consumer Protection Act can continue despite grant of the said permission but it would be open to such complainants to withdraw their individual complaints and join as parties to the complaint instituted in a representative character. However, once the requisite permission under Section 12(1)(c) of the Consumer Protection Act is granted, an individual complaint, expressing the same grievance will not be maintainable and the only remedy open to a consumer having the same grievance is to join as a party to the complaint instituted in a representative character.

16. Before parting with the references, we would like to emphasise that considering the binding effect of a decision rendered in a complaint under Section 12(1)(c) of the Consumer Protection Act, on all the consumers, on whose behalf or for whose benefit such a complaint is filed, even if they chose not to join as a party to the complaint, it is necessary to exercise due care and caution while considering such a complaint even at the initial

stage and to grant the requisite permission, only where the complaint fulfils all the requisite conditions in terms of Section 12(1)(c) of the Consumer Protection Act read with Order I Rule 8 of the Code of Civil Procedure; as interpreted in this reference. It would also be necessary for the Bench to either give individual notices or an adequate public notice of the institution of the complaint to all the persons on whose behalf or for whose benefit the complaint is instituted. Such a notice should disclose inter-alia (i) the subject matter of the complaint including the particulars of the project if the complaint relates to a housing project / scheme, (ii) the class of persons on whose behalf or for whose benefit the complaint is filed, (iii) the common grievance sought to get redressed through the class action, (iv) the alleged deficiency in the services and (v) the reliefs claimed in the complaint.

It will also be necessary to hear the opposite party, before taking a final view on the grant or otherwise of the permission required in terms of Section 12(1)(c) of the Consumer Protection Act.

17. The Complaint and the Appeals, in which references were made, be listed before the appropriate Benches, for further proceedings, in the light of the answer to the reference.

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.....J
D.K. JAIN
PRESIDENT

.....J
V.K. JAIN
MEMBER

.....
DR. B.C. GUPTA
MEMBER