

A BRIGADE ENTERPRISES LIMITED

v.

ANIL KUMAR VIRMANI & ORS.

(Civil Appeal No. 1779 of 2021)

B DECEMBER 17, 2021

[HEMANT GUPTA AND V. RAMASUBRAMANIAN, JJ.]

- Consumer Protection Act, 2019: s.35(1)(c): Representative Suit – Appellant-builder launched project for construction of residential complex, comprising of 1134 units in three blocks namely Amber block, Blue block, and Crimson block – 91 persons who purchased 51 residential apartments, in a residential complex joined together and filed a consumer complaint before the National Consumer Disputes Redressal Commission to seek compensation on the ground of delay in handing over the possession by appellant*
- D – Consumer complaint was accompanied by an application under s.35(1)(c), seeking permission of National Commission to prosecute the matter jointly, for the benefit of and on behalf of, not only of the 91 applicants, but of numerous other consumers who purchased apartments in the same complex – National Commission allowed application under s.35(1)(c) – Challenging the said application, appellant filed instant appeal – Held: s.35(1)(c) enables one or more consumers, where there are numerous consumers having the same interest, with the permission of the Commission, to file a complaint, on behalf of or for the benefit of all consumers so interested – The sine qua non for invoking s.35(1)(c) is that all consumers on whose behalf or for whose benefit the provision is invoked, should have the same interest – s.38(11) of the Consumer Protection Act, 2019 makes the provisions of Or.I r.8 of CPC applicable to cases where the complainant is a consumer referred to in s.2(5)(v) – Explanation under Or.I r.8 distinguishes sameness of interest from sameness of the cause of action – Since “sameness of interest” is the prerequisite for an application under Or.I r.8, CPC read with s.35(1)(c) of the Consumer Protection Act, 2019, it was necessary for the respondents to include in the consumer complaint, sufficient averments that would show sameness of interest – Total number of residential apartments constructed were 1134*

H

but there were no pleadings in regard to 386 apartments of Amber block – Even in respect of the owners of the remaining 748 residential apartments in blue block and Crimson block, the complaint did not contain any specific averments regarding sameness of interest – The delay in handing over possession of the residential apartments might have given rise to a cause of action for the individual purchasers of flats to sue the builder – But sameness of the cause of action is not equal to sameness of interest – The period of delay in completion of project and handing over of possession also does not appear to be uniform in all 1134 cases – Respondents cannot project sameness of interest for the purchasers – Hence, National Commission should not have granted permission to respondents to file the complaint in a representative capacity – Complaint filed by the respondents to be treated as a joint complaint and not a complaint in a representative capacity on behalf of 1134 purchasers.

Consumer Protection Act, 2019 – s.35(1)(c) – Interpretation of – Sine qua non for invoking s.35(1)(c) is that all consumers on whose behalf or for whose benefit the provision is invoked, should have the same interest – Interestingly, s.35(1) (c) uses the disjunction “or” in between two sets of words, namely, (i) “on behalf of”; and (ii) “for the benefit of” – A complaint filed under s.35(1)(c) could either be “on behalf of” or “for the benefit of” all consumers having the same interest – Or.I r.8, CPC, unlike s.35(1)(c) operates both ways and contains provisions for a two-way traffic – It not only permits plaintiffs to sue in a representative capacity but also permits people to be sued and to be defended in an action, in a representative capacity – Since “sameness of interest” is the prerequisite for an application under Or.I r.8, CPC read with s.35(1)(c) of the Consumer Protection Act, 2019, it was necessary for the respondents to include in the consumer complaint, sufficient averments that would show sameness of interest.

Consumer Protection Act, 2019: s.35(1)(c) – Sameness of interest – The period of delay in the completion of project and handing over of possession, does not appear to be uniform in all 1134 cases – Complainants cannot project sameness of interest for the purchasers in whose case the period of delay was negligible and those in whose cases there was a huge delay.

- A *Consumer Protection Act, 1986: Consumer Protection Act, 2019 – s.12(1)(c) of the 1986 Act or s.35(1)(c) of the 2019 Act – For allowing an application under s.12(1)(c) of the 1986 Act or s.35(1)(c) of the 2019 Act, the pleadings and the reliefs are to be considered – If so considered, National Commission could not have granted permission to the respondents in this case, to file the complaint in a representative capacity for and on behalf of the owners of all the 1134 flats.*
- B *Consumer Protection Act, 2019: s.2(5)(i), s.36(1) – Interpretation of – Consumer – It is true that s.2(5)(i) uses the expression “a consumer” – If the vowel “a” and the word “consumer” appearing in s.2(5)(i) are to be understood to exclude more than one person, it will result in a disastrous consequence while reading s.2(5)(vi) – s.2(5)(vi) states that in the case of death of a consumer, “his legal heir or legal representative” will be a complainant – Unless the words “legal heir” and “legal representative” are understood to mean ‘legal heirs’ and ‘legal representatives’, a meaningful reading of the provision may not be there – Under s.13(2) of the General Clauses Act, 1897, words in the singular shall include the plural and vice versa in all Central Acts and Regulations, unless there is anything repugnant in the subject or context – Anything repugnant cannot be read in the subject or context of s. 2(5) or 35(1)(c) or 38(11) of the Consumer Protection Act, 2019 to hold that the word in the singular, namely, “consumer” will not include the plural – The proper way of interpreting s.35(1) read with s.2(5), would be to say that a complaint may be filed: (i) by a single consumer; (ii) by a recognised consumer Association; (iii) by one or more consumers jointly, seeking the redressal of their own grievances without representing other consumers who may or may not have the same interest; (iv) by one or more consumers on behalf of or for the benefit of numerous consumers; and (v) the Central Government, Central Authority or State Authority.*
- G **Allowing the appeal, the Court**

- H **HELD: 1. In view of the fact that none of the owners of the apartments in Amber block have joined in the filing of the complaint, coupled with the fact that there is no pleading with respect to the timeline of the project in respect of Amber block,**

the consumer complaint filed by the respondents cannot be treated as one representing the owners of 386 apartments in Amber block. The respondents ought to have either included as one of the complainants, the owner of one of the apartments in Amber block or at least made necessary averments in the pleading about the timeline for completion of the Amber block, to make the complaint, as one filed in a representative capacity on behalf of the owners of flats in all the three blocks. Let us now see at least whether the complaint was maintainable in a representative capacity on behalf of the owners of the flats in Blue block and Crimson block, in the light of the requirements of Section 35(1)(c) of the Act. [Para 13][953-E-G] A

2. Section 35(1)(c) enables one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, to file a complaint, on behalf of or for the benefit of all consumers so interested. It is needless to point out that the *sine qua non* for invoking Section 35(1)(c) is that all consumers on whose behalf or for whose benefit the provision is invoked, should have the same interest. Interestingly, Section 35(1)(c) uses the disjunction “or” in between two sets of words, namely, (i) “*on behalf of*”. Therefore, a complaint filed under Section 35(1)(c) could either be “*on behalf of*” or “*for the benefit of*” all consumers having the same interest. [Paras 14, 15][953-G-H; 954-A-C] B

3. Section 38(11) of the Consumer Protection Act, 2019 makes the provisions of Order I Rule 8 of the First Schedule to the Code of Civil Procedure, 1908 applicable to cases where the complainant is a consumer referred to in Section 2(5)(v), which defines a ‘complainant’ to mean one or more consumers, where there are numerous consumers having the same interest. Order I Rule 8, CPC, unlike Section 35(1)(c) operates both ways and contains provisions for a two-way traffic. It not only permits plaintiffs to sue in a representative capacity but also permits people to be sued and to be defended in an action, in a representative capacity. [Paras 16, 17][954-D-E] C

4. The Explanation under Order I Rule 8 is of significance. It distinguishes persons having the same interest in one suit from D

E

F

G

H

- A persons having the same cause of action. To establish sameness of interest, it is not necessary to establish sameness of the cause of action. The Explanation under Order I Rule 8, is a necessary concomitant of the provisions of the Rules 1 and 3 of Order I. Order I Rule 1, CPC, allows many persons to join in one suit as plaintiffs. Order I, Rule 3 allows many persons to be joined in one suit as defendants. But to fall under Order I Rule 1 or Order I Rule 3, the right to relief should arise out of or be in respect of the same act or transaction allegedly existing in such persons, jointly, severally or in the alternative. To some extent, Rules 1 and 3 of Order I are founded upon the sameness of the cause of action. This is why the Explanation under Order I Rule 8 distinguishes sameness of interest from the sameness of the cause of action. [Paras 19, 20][956-E-G]
 - 5. Since "*sameness of interest*" is the pre-requisite for an application under Order I Rule 8, CPC read with Section 35(1)(c)
- B
- C
- D of the Consumer Protection Act, 2019, it was necessary for the respondents to include in the consumer complaint, sufficient averments that would show sameness of interest. As we have pointed out earlier the total number of residential apartments constructed in three blocks comprising of about 20 wings (*7 wings each in Amber and Blue blocks and 6 wings in Crimson block*) were 1134. There are no pleadings insofar as the purchasers of 386 residential apartments in the 7 wings of Amber block are concerned. Even in respect of the owners of the remaining 748 residential apartments in blue block and Crimson block, the complaint does not contain any specific averments regarding sameness of interest. The delay in handing over possession of the residential apartments might have given rise to a cause of action for the individual purchasers of flats to sue the builder. But sameness of the cause of action is not equal to sameness of interest. The existence of sameness of interest, has been questioned by the appellant-builder on the ground that delay compensation as stipulated in the Agreements was offered to the purchasers and that some of them accepted the same without any demur or protest, while a few others have refused to accept. It is not clear from the consumer complaint as to how (*i*) those who have accepted the compensation under protest; (*ii*) those
- E
- F
- G
- H

who accepted without protest; and (iii) those who refused to accept the compensation, have the sameness of interest. [Para 21][956-H; 957-A-D] A

6. The period of delay in the completion of the project and the handing over of possession, does not appear to be uniform in all 1134 cases. The respondents-complainants cannot project sameness of interest for the purchasers in whose case the period of delay was negligible and those in whose cases there was a huge delay. The delay in handing over possession need not necessarily be the only deficiency in service on the part of the appellant-builder. Some of the purchasers of flats may also have other complaints and their right to proceed against appellant cannot be stultified by a few individuals invoking Section 35(1)(c). That a few purchasers have chosen to approach the Karnataka State Consumer Disputes Redressal Commission to ventilate their individual grievances shows that all the 1134 buyers do not have the same interest as that of the respondents. At least if the respondents have given the names of purchasers of all flats on whose behalf the present complaint could be entertained, they would have been better off. But they have not done so. [Paras 22, 23][957-E-H] B

Chairman, Tamil Nadu Housing Board, Madras v. T.N. Ganapathy (1990) 1 SCC 608 : [1990] 1 SCR 272; C
Chairman, Tamil Nadu Housing Board, Madras v. T.N. Ganapathy and Vikrant Singh Malik & Ors. v. Supertech Limited & Ors. (2020) 9 SCC 145; Rameshwar Prasad Shrivastava & Ors. v. Dwarkadhis Projects Private Limited & Ors. (2019) 2 SCC 417 : [2018] 14 SCR 1118; Anjum Hussain and Ors. v. Intellicity Business Park Private Limited and Ors. (2019) 6 SCC 519 : [2019] 7 SCR 1036 – referred to. D

7. Allowing an application under Section 12(1)(c) of the 1986 Act or Section 35(1)(c) of the 2019 Act, the pleadings and the reliefs are to be considered. If so considered, the National Commission could not have granted permission to the respondents in this case, to file the complaint in a representative capacity for and on behalf of the owners of all the 1134 flats. [Para 29][959-C-D] E

G

H

- A **8. There is no scope for the contention that wherever there are more consumers than one, they must only take recourse to Order I Rule 8 CPC, even if the complaint is not on behalf of or for the benefit of, all the consumers interested in the matter.** There may be cases where only “*a few consumers*” and not “*numerous consumers*” have the same interest. There is nothing in the Act to prohibit these few consumers from joining together and filing a joint complaint. A joint complaint stands in contrast to a complaint filed in a representative capacity. For attracting the provisions of Section 35(1)(c), the complaint filed by one or more consumers should be on behalf of or for the benefit of numerous consumers having same interest. It does not mean that where there are only very few consumers having the same interest, they cannot even join together and file a single complaint, but should take recourse only to independent and separate complaints.[Para 34][961-B-D]
- D **9. It is true that Section 2(5)(i) uses the expression “*a consumer*”.** If the vowel “*a*” and the word “*consumer*” appearing in Section 2(5)(i) are to be understood to exclude more than one person, it will result in a disastrous consequence while reading Section 2(5)(vi). Section 2(5)(vi) states that in the case of death of a consumer, “*his legal heir or legal representative*” will be a complainant. Unless the words “*legal heir*” and “*legal representative*” are understood to mean ‘legal heirs’ and ‘legal representatives’, a meaningful reading of the provision may not be there. [Para 35][961-E-F]
- F **10. Under Section 13(2) of the General Clauses Act, 1897,** words in the singular shall include the plural and vice versa in all Central Acts and Regulations, unless there is anything repugnant in the subject or context. We cannot read anything repugnant in the subject or context of Section 2(5) or 35(1)(c) or 38(11) of the Consumer Protection Act, 2019 to hold that the word in the singular, namely, “*consumer*” will not include the plural. [Para 36][961-F-G]
- H **11. The proper way of interpreting Section 35(1) read with section 2(5), would be to say that a complaint may be filed:** (i) by a single consumer; (ii) by a recognised consumer Association; (iii) by one or more consumers jointly, seeking the redressal of

their own grievances without representing other consumers who may or may not have the same interest; (iv) by one or more consumers on behalf of or for the benefit of numerous consumers; and (v) the Central Government, Central Authority or State Authority. [Para 38][962-C-D] A

12. The provisions of the Consumer Protection Act are in addition to and not in derogation of the provisions of any other law for the time being in force, by virtue of Section 100. Even Section 38 which prescribes the procedure to be followed by the Commission for enquiring into the complaint, does not expressly exclude the application of the provisions of CPC. Though Sub-sections (9), (11) and (12) of Section 38 make specific reference only to a few provisions of the Code of Civil Procedure, the principle behind Order I Rule 1 enabling more than one person to join in a suit as plaintiff is not expressly excluded. Therefore, that while the National Commission was wrong in this case, in the peculiar facts and circumstances in permitting an application under Section 35(1)(c) read with Order I Rule 8 CPC, it does not mean that the complaint filed by the respondents itself is liable to be thrown out. The complaint filed by the respondents may have to be treated as a joint complaint and not a complaint in a representative capacity on behalf of 1134 purchasers. [Paras 39, 40][962-D-G] B C D E

Case Law Reference

[1990] 1 SCR 272	referred to	Para 4
(2020) 9 SCC 145	referred to	Para 6 F
[2018] 14 SCR 1118	referred to	Para 26
[2019] 7 SCR 1036	referred to	Para 27

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1779 of 2021.

From the Judgment and Order dated 05.04.2021 of the National Consumer Disputes Redressal Commission, New Delhi in I.A. No. 7350 of 2020 in Consumer Case No. 880 of 2020. G

Jayant Bhushan, Sr. Adv., Mayank Mishra, Sarvesh Singh Baghel, Ms. Ayshwarya Chandra, Aman Chaudhary, Advs. for the Appellant. H

A Ajit Kumar Sinha, Sr. Adv., Govind Jee, Krishna Kumar Singh, Omanakuttan K. K., Advs. for the Respondents.

The Judgment of the Court was delivered by

V. RAMASUBRAMANIAN, J.

- B 1. Challenging an order of the National Consumer Disputes Redressal Commission, passed under Section 35(1)(c) of the Consumer Protection Act, 2019, allowing 91 purchasers of 51 apartments in the residential complex developed by them, to file a consumer complaint in a representative capacity, on behalf of and for the benefit of more than about 1000 purchasers, the builder has come up with the above appeal.
- C 2. We have heard Mr. Jayant Bhushan, learned senior counsel for the appellant, Mr. Ajit Kumar Sinha, learned senior counsel for the respondents and Mr. Omanakuttan K. K., learned counsel appearing for the intervenors.

- D 3. About 91 persons who purchased 51 residential apartments, in a residential complex comprising of about 1134 apartments, promoted by the appellant herein, joined together and filed a consumer complaint on the file of the National Consumer Disputes Redressal Commission, New Delhi. The Consumer complaint was accompanied by an application under Section 35(1)(c), seeking the permission of the National Commission E to prosecute the matter jointly, for the benefit of and on behalf of, not only of the 91 applicants, but of numerous other consumers who have purchased apartments in the same complex. In other words the consumer complaint filed by those applicants, who are respondents herein, is a class action and the permission sought by them was in the nature of a F permission that could be granted by the Civil Court in terms of Order I Rule 8 of the Code of Civil Procedure.

- G 4. Though the builder who is the appellant herein objected to the application under Section 35(1)(c), the National Commission allowed the application by relying upon the decision of this Court in the **Chairman, Tamil Nadu Housing Board, Madras vs. T.N. Ganapathy**¹ and the decision of the National Commission in **Ambrish Kumar Shukla vs. Ferrous Infrastructure Pvt. Ltd.** Aggrieved by the said Order, the builder has come up with the above appeal.

H

¹(1990) 1 SCC 608

5. The main grievance of the appellant-builder, as projected by Mr. Jayant Bhushan, learned senior counsel is that out of total of 1134 apartments constructed and sold by them, the owners of merely 51 apartments have joined together and invoked the jurisdiction of the National Consumer Commission and that such a minuscule percentage of consumers cannot seek to file the complaint in a representative capacity. It is also the contention of the learned senior counsel for the appellant that there was no commonality of interest or grievance, as some individual apartment owners have also invoked the jurisdiction of the Karnataka State Consumer Disputes Redressal Commission, seeking redressal of their separate and distinct grievances.

6. However, the contention of Mr. Ajit Kumar Sinha, learned counsel appearing on behalf of the respondents/original complainants is that the issue is no longer *res integra* in view of the decisions of this Court in ***Chairman, Tamil Nadu Housing Board, Madras vs. T.N. Ganapathy and Vikrant Singh Malik & Ors. vs. Supertech Limited & Ors.***² It is also his contention that the respondents have the sameness of interest with the buyers of all the 1134 apartments, which is a *sine qua non* for maintaining an application under Section 35(1)(c) and that, therefore, the National Commission was right in allowing the application.

7. Before we get into an analysis of the rival contentions with specific reference to the statutory provisions, it is necessary to look into the reliefs prayed for, by the respondents in their consumer complaint and the pleadings on the basis of which the reliefs were so sought. The reliefs sought by the respondents in their consumer complaint, for the benefit of and on behalf of the purchasers of all the flats in the entire residential complex reads as follows:-

"That in view of the abovementioned facts and circumstances this Hon'ble Commission may graciously be pleased to pass orders and to direct the OP to:-

- i. *Direct the OP to pay to each of the Complainants and to each buyer having same interest delay compensation, as stipulated in the Sale and Construction Agreements, for unpaid period out of the "Total Period of Delay" as indicated in Para 46 of the Consumer Complaint;*

² (2020) 9 SCC 145

- A *ii. Direct the OP to pay to each of the Complainants and to each buyer having same interest, compensatory interest @ 12% p.a. on individual consideration amount paid, for abnormal and inordinate delay in construction, till handing over possession of flats to the complainants, computing total period of delay as indicated in Para 46 of the Consumer Complaint;*
- B *iii. Award cost of the Complaint to the Complainants; and/or*
- C *iv. Pass any other and/or further relief, which this Hon'ble Commission thinks fit and proper, in the facts and circumstances of the case, in favour of the complainants and against the OP."*
- D 8. The pleadings on the basis of which the respondents sought the aforesaid prayers, in brief, are as follows: *(i)* that the appellant launched the subject project in the year 2013; *(ii)* that the project styled as "Brigade Lakefront" was to comprise of about 1100 units in three blocks, *namely*, *Amber* block, *Blue* block and *Crimson* block; *(iii)* that *Amber* block, also called Building No.1, was to have seven wings, *namely*, Wings A, B, C, D, E, F and G; *Blue* block, also called Building No.2 was to have Wings H, I, J, K, L, M and N and *Crimson* block, also called Building Nos.3 and 4 were to have Wings O, P, Q, R, S and T; *(iv)* that in respect of the flats in *Blue* block, the promised delivery date was 30.06.2016 with a six months grace period; *(v)* that though the completion certificate and structural stability certificate were also issued by the Consultant/Architect for the buildings in *Blue* block on 3.05.2017, the occupancy certificate was issued partially on 28.12.2018 and the occupancy certificate for the balance was issued on 25.06.2019; *(vi)* that in respect of the buildings in *Crimson* block, the promised delivery date was 31.01.2018 with a grace period of six months; *(vii)* that though the completion certificate for the *Crimson* block was issued by the architect on 10.08.2018, the occupancy certificate was issued partially on 28.12.2018; *(viii)* that the builder was guilty of unfair trade practice, inasmuch as the terms and conditions of the agreement prescribed a paltry compensation of Rs.5 per square feet to the purchasers, if there was delay in completion of the project, while penal interest was levied on the buyers at 18% p.a. whenever they committed default or delay in making payment; *(ix)* that on account of the delay on the part of the

appellant in handing over possession, the buyers suffered losses in the form of payment of monthly rent, interest on the loans taken and payment of higher registration charges, as the circle rates had gone up in the meantime; and (x) that therefore they were constrained to file a complaint.

9. From the aforesaid averments contained in the consumer complaint, it could be seen that the delay on the part of the builder in handing over possession, was the primary ground on which compensation was sought by the respondents. We have already extracted the prayers made in the original complaint. Interestingly the prayer portion of the complaint does not contain the quantification of the total amount of compensation sought by the respondents either individually or collectively for and on behalf of all the purchasers of all the 1134 residential apartments. The prayer portion of the complaint refers to paragraph 46 of the complaint, for the purpose of computation of delay compensation. But paragraph 46 of the complaint does not convey any meaning except if taken into account along with paragraph 45. Therefore, paragraphs 45 and 46 of the complaint are extracted as follows:

“45. Computation of “Total Period of Delay”—The Complainants assert that the Total Period of Delay be calculated as follows:

Delay Period Start – Promised Date of Possession, not considering the grace period; and

Delay Period End – Either of the following two dates based on facts of individual complainants:

a. Where possession was taken prior to issuance of Occupancy Certificate, the Date of Occupancy Certificate; OR

b. Where possession was taken after the issuance of Occupancy Certificate, then Date of possession Offered;

It would be relevant to state that the meaning and nature of ‘possession’ as stated by the complainants in this para would mean legal possession only where said possession had been given or offered to be given upon confirmation of readiness of the flat for possession, in adherence to Schedule of Construction Agreement.

A

B

C

D

E

F

G

H

- A *46. It is clearly and unambiguously inferred that the Buyers shall receive possession by executing the Sale Deed and getting the same registered. Both actual possession and sale deed registration have to be done in unison in accordance with clauses of the agreement for construction. Hence, possession without registering and executing sale deed or vice versa does not together construe to be "possession" for the purpose of calculating the delay suffered by the buyers. If both events are done on separate times, the later date of the two would prevail. It is respectfully submitted that for the given residential project, the date of grant of Occupancy Certificate shall be reckoned as the pivotal event to ascertain delayed possession and calculating compensation based thereon."*
- B 10. Paragraphs 45 and 46 contain a tacit admission that the period of delay in handing over possession of the flats, may vary from buyer to buyer in respect of the purchasers of all the 1134 apartments. This is why the respondents have sought the indulgence of the Commission to compute the delay in respect of each case, on the basis of formulae indicated in paragraph 45.
- C 11. However, paragraph 41 of the consumer complaint contains the valuation of the complaint, at least insofar as the 91 complainants who jointly filed the consumer complaint are concerned. The relevant portion of paragraph 41 of the complaint reads as follows:
- D *"It is submitted that as per the Agreement terms reproduced above, OPs are committed to pay meager delay compensation of Rs. 5/- per sq. ft. of saleable area, per month, which comes to around 0.1% per annum of the sale consideration, or even lesser. On the contrary, the penalty charged by the OPs in case the buyers' default or delay in paying the instalment is 18% per annum. It is clear that the balance of performance is over 180 times against the buyers who have been bearing the brunt of the absolute mismanagement of project by the OPs. The buyer is not only patiently waiting for the possession but also gets a double whammy to keep paying all the instalments without enjoying the property. Of the total number of complainants those who have preferred to approach this Hon'ble Forum in this instant Complaint, the aggregate value*
- E *H*

of sale for 51 complainant-buyers alone, is about Rs. 66 Crore whereas the aggregate amount disbursed by the OP so the same buyers, in the name of Delay Compensation is a meager, less than Rs. 10 lakh which is just about 0.1% for the entire of delay of more than 2 years.”

12. Before we proceed further we must record one important fact, namely, that even according to the respondents-complainants, the project comprised of three blocks namely Amber block, Blue block and Crimson block. Amber block was to have seven Wings with 386 apartments. It appears that none of the owners of these 386 apartments in Amber block have joined with the respondents-complainants. This is why the entire discussion about the delay in completion of the project, with reference to the timeline of events found in paragraph 14 of the consumer complaint, refers only to Blue block and Crimson block. The appellant has given a tabulation in their counter to the original complaint, pointing out that Blue block comprises of 412 apartments, out of which the owners of only 47 apartments have joined in the filing of the complaint and that Crimson block has 336 apartments, out of which the owners of only 4 apartments have joined in the complaint.

13. In view of the fact that none of the owners of the apartments in Amber block have joined in the filing of the complaint, coupled with the fact that there is no pleading with respect to the timeline of the project in respect of Amber block, the consumer complaint filed by the respondents cannot be treated as one representing the owners of 386 apartments in Amber block. The respondents ought to have either included as one of the complainants, the owner of one of the apartments in Amber block or at least made necessary averments in the pleading about the timeline for completion of the Amber block, to make the complaint, as one filed in a representative capacity on behalf of the owners of flats in all the three blocks. Let us now see at least whether the complaint was maintainable in a representative capacity on behalf of the owners of the flats in Blue block and Crimson block, in the light of the requirements of Section 35(1)(c) of the Act.

14. Section 35(1)(c) enables one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, to file a complaint, on behalf of or for the benefit of all consumers so interested. It is needless to point out that the *sine qua non* for invoking Section 35(1)(c) is that all consumers on

- A whose behalf or for whose benefit the provision is invoked, should have the same interest. Interestingly, Section 35(1)(c) uses the disjunction “or” in between two sets of words, namely, *(i)* “*on behalf of*”; and *(ii)* “*for the benefit of*”. Clause (c) of Sub-Section (1) of Section 35 reads as under:
- B “*one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, on behalf of, or for the benefit of, all consumers so interested.*”
15. Therefore, a complaint filed under Section 35(1)(c) could either
- C be “*on behalf of*” or “*for the benefit of*” all consumers having the same interest.
16. Section 38(11) of the Consumer Protection Act, 2019 makes the provisions of Order I Rule 8 of the First Schedule to the Code of Civil Procedure, 1908 applicable to cases where the complainant is a
- D consumer referred to in Section 2(5)(v), which defines a ‘complainant’ to mean one or more consumers, where there are numerous consumers having the same interest.
17. Order I Rule 8, CPC, unlike Section 35(1)(c) operates both ways and contains provisions for a two-way traffic. It not only permits
- E plaintiffs to sue in a representative capacity but also permits people to be sued and to be defended in an action, in a representative capacity. Order I Rule 8 reads as follows:-
- “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,—**
- F (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;*
- G (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.*
- H (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. A

(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.* B

(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 expense, notice to all persons so interested in the manner specified in sub-rule (2).* C

(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.* D

(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."* E

18. In simple terms, the salient features of the stipulations contained in Order I Rule 8 CPC can be summed up as follows:

(i) where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue on behalf of or for the benefit of all persons so interested; F

(ii) where there are numerous persons having the same interest in one suit, one or more of such persons may be sued or one or more such persons may defend such suit, on behalf of or for the benefit of all persons so interested;

(iii) the Court itself may, without the plaintiffs or defendants seeking any permission under Order I Rule 8(1)(a), direct that one or more such persons may sue or be sued or may defend the suit on behalf of and for the benefit of all persons interested;

G

H

- A (iv) notice of the institution of the suit to all persons so interested either by personal service or by public advertisement should be ordered by the Court in both categories of cases, namely, where permission is given by the Court on the application of the individuals or direction is issued by the Court itself;
- B (v) any person on whose behalf or for whose benefit the suit is instituted or defended may seek to be made a party to the suit;
- (vi) abandonment of the whole or part of the claim, withdrawal of the suit or the recording of any agreement, compromise or satisfaction shall not be allowed by the Court unless notice to all persons interested in the matter is issued either by personal service or by public advertisement.
- C
- D (vii) the Court may at any time substitute the person suing or defending in a representative capacity, with any other person, if the former was not prosecuting the suit or defence with due diligence.
- (viii) the decree passed in the suit covered by this Rule will be binding on all persons.

19. The Explanation under Order I Rule 8 is of significance. It distinguishes persons having the same interest in one suit from persons having the same cause of action. To establish sameness of interest, it is not necessary to establish sameness of the cause of action.

20. *The Explanation under Order I Rule 8, is a necessary concomitant of the provisions of the Rules 1 and 3 of Order I. Order I Rule 1, CPC, allows many persons to join in one suit as plaintiffs. Order I, Rule 3 allows many persons to be joined in one suit as defendants. But to fall under Order I Rule 1 or Order I Rule 3, the right to relief should arise out of or be in respect of the same act or transaction allegedly existing in such persons, jointly, severally or in the alternative. To some extent, Rules 1 and 3 of Order I are founded upon the sameness of the cause of action. This is why the Explanation under Order I Rule 8 distinguishes sameness of interest from the sameness of the cause of action.*

21. Since “sameness of interest” is the pre-requisite for an application under Order I Rule 8, CPC read with Section 35(1)(c) of the

Consumer Protection Act, 2019, it was necessary for the respondents to include in the consumer complaint, sufficient averments that would show sameness of interest. As we have pointed out earlier the total number of residential apartments constructed in three blocks comprising of about 20 wings (*7 wings each in Amber and Blue blocks and 6 wings in Crimson block*) were 1134. There are no pleadings insofar as the purchasers of 386 residential apartments in the 7 wings of Amber block are concerned. Even in respect of the owners of the remaining 748 residential apartments in blue block and Crimson block, the complaint does not contain any specific averments regarding sameness of interest. The delay in handing over possession of the residential apartments might have given rise to a cause of action for the individual purchasers of flats to sue the builder. But sameness of the cause of action is not equal to sameness of interest. The existence of sameness of interest, has been questioned by the appellant-builder on the ground that delay compensation as stipulated in the Agreements was offered to the purchasers and that some of them accepted the same without any demur or protest, while a few others have refused to accept. It is not clear from the consumer complaint as to how (i) those who have accepted the compensation under protest; (ii) those who accepted without protest; and (iii) those who refused to accept the compensation, have the sameness of interest.

22. The period of delay in the completion of the project and the handing over of possession, does not appear to be uniform in all 1134 cases. The respondents-complainants cannot project sameness of interest for the purchasers in whose case the period of delay was negligible and those in whose cases there was a huge delay.

23. We may have to look at the issue also from the point of view of the buyers. The delay in handing over possession need not necessarily be the only deficiency in service on the part of the appellant-builder. Some of the purchasers of flats may also have other complaints and their right to proceed against appellant cannot be stultified by a few individuals invoking Section 35(1)(c). That a few purchasers have chosen to approach the Karnataka State Consumer Disputes Redressal Commission to ventilate their individual grievances shows that all the 1134 buyers do not have the same interest as that of the respondents. At least if the respondents have given the names of purchasers of all flats on whose behalf the present complaint could be entertained, they would have been better off. But they have not done so.

A

B

C

D

E

F

G

H

- A 24. Reliance is placed by the learned senior counsel for the respondents, upon the Judgment of this Court in ***Chairman, Tamil Nadu Housing Board, Madras vs. T.N. Ganapathy*** (supra), to drive home the point that the object of Order I Rule 8 is to facilitate the decision of questions in which large number of persons are interested, without recourse to the ordinary procedure and that, therefore, the provision must receive an interpretation which will subserve the object of its enactment. This Court pointed out in the said case that though each of the allottees of plots by the Housing Board may be interested individually in fighting out the demand separately made or likely to be made by the Board, it would not make Order I Rule 8 inapplicable.
- B 25. But the above decision in ***Tamil Nadu Housing Board*** (supra) cannot be pressed into service by the respondents for two reasons, namely, **(i)** that what was questioned in a representative suit in that case, was the additional demand sought to be made by the Housing Board on all the allottees uniformly, for an amount over and above the tentative price originally fixed; and **(ii)** that in any case this Court restricted the applicability of the decision only to those allottees of the low income group. Therefore, the sameness of interest has to be tested on the basis of the nature of the reliefs claimed and the pleadings that pinpoint the sameness of interest.
- C 26. In ***Rameshwar Prasad Shrivastava & Ors. vs. Dwarkadhis Projects Private Limited & Ors.***³, this Court was concerned with a case where a complaint filed by a group of 19 persons who were allotted residential apartments in a Group Housing Project, came to be dismissed by the National Commission, for want of a proper application under Section 12(1)(c) of the 1986 Act [equivalent to Section 35(1)(c) of the 2019 Act]. After referring to the definition of the expression “complainant” in Section 2(1)(b)(iv) of the 1986 Act and the requirement of Section 13(6) of the 1986 Act, this Court upheld the Order of the National Commission holding the complaint to be not maintainable. This Court held that the requirement of Order I Rule 8 prescribed in Section 13(6) of the 1986 Act should be read into Section 12(1)(c) of the 1986 Act.
- D 27. In ***Anjum Hussain and Ors. vs. Intellicity Business Park Private Limited and Ors.***⁴, this Court reversed the decision of the

³ (2019) 2 SCC 417

H ⁴ (2019) 6 SCC 519

National Commission which dismissed an application under Section 12(1)(c) of the 1986 Act, on the ground that the object of Section 12(1)(c) is to reduce multiplicity of proceedings and that, therefore, it must receive an interpretation which would subserve the object of its enactment. A

28. In *Vikrant Singh Malik and Ors. vs. Supertech Limited and Ors.* (supra), this Court upheld the order of the National Commission that dismissed an application under Section 12(1)(c) of the 1986 Act, on the ground that the reliefs prayed for in the consumer complaint, were confined only to 26 complainants and that even the pleadings as framed and drawn up, highlighted only the specific grievances of those 26 complainants. B

29. All the above decisions show that for allowing an application under Section 12(1)(c) of the 1986 Act or Section 35(1)(c) of the 2019 Act, the pleadings and the reliefs are to be considered. If so considered, the National Commission could not have granted permission to the respondents in this case, to file the complaint in a representative capacity for and on behalf of the owners of all the 1134 flats. C D

30. That takes us to the next question as to the fate of the complaint filed by the respondents. It is sought to be contended that once the application under Section 35(1)(c) is held liable to be rejected, the complaint should also go, as more than one consumer cannot institute a complaint unless they come within the definition of the word “complainant” and also satisfy the requirements of Section 38(11) read with Order I Rule 8 CPC. E

31. It is true that the definition of the word “complainant” is little misleading. Section 2(5) of the Consumer Protection Act, 2019 reads as under: F

“(5) “complainant” means—

- (i) a consumer; or
- (ii) any voluntary consumer association registered under any law for the time being in force; or G
- (iii) the Central Government or any State Government; or
- (iv) the Central Authority; or
- (v) one or more consumers, where there are numerous consumers having the same interest; or H

- A (vi) *in case of death of a consumer, his legal heir or legal representative; or*
(vii) *in case of a consumer being a minor, his parent or legal guardian;*
- B 32. Section 38(11) reads as under:-
“38. Procedure on admission of complaint.
(1) Where the complainant is a consumer referred to in sub-clause (v) of clause (5) of section 2, the provisions of Order I Rule 8 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 Commission thereon.”
- C 33. Section 35(1) reads as under:
- D **“35. 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 Commission by—*
- E (a) *the consumer,—*
(i) *to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided; or*
(ii) *who alleges unfair trade practice in respect of such goods or service;*
- F (b) *any recognised consumer association, whether the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided, or who alleges unfair trade practice in respect of such goods or service, 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 Commission, on behalf of, or for the benefit of, all consumers so interested; or*
- G
- H

(d) *the Central Government, the Central Authority or the State Government, as the case may be:* A

Provided that the complaint under this sub-section may be filed electronically in such manner as may be prescribed.

34. A careful reading of the above provisions would show that there is no scope for the contention that wherever there are more consumers than one, they must only take recourse to Order I Rule 8 CPC, even if the complaint is not on behalf of or for the benefit of, all the consumers interested in the matter. There may be cases where only “*a few consumers*” and not “*numerous consumers*” have the same interest. There is nothing in the Act to prohibit these few consumers from joining together and filing a joint complaint. A joint complaint stands in contrast to a complaint filed in a representative capacity. For attracting the provisions of Section 35(1)(c), the complaint filed by one or more consumers should be on behalf of or for the benefit of numerous consumers having same interest. It does not mean that where there are only very few consumers having the same interest, they cannot even join together and file a single complaint, but should take recourse only to independent and separate complaints. B C D

35. It is true that Section 2(5)(i) uses the expression “*a consumer*”. If the vowel “*a*” and the word “*consumer*” appearing in Section 2(5)(i) are to be understood to exclude more than one person, it will result in a disastrous consequence while reading Section 2(5)(vi). Section 2(5)(vi) states that in the case of death of a consumer, “*his legal heir or legal representative*” will be a complainant. Unless the words “*legal heir*” and “*legal representative*” are understood to mean ‘legal heirs’ and ‘legal representatives’, a meaningful reading of the provision may not be there. E F

36. Under Section 13(2) of the General Clauses Act, 1897, words in the singular shall include the plural and vice versa in all Central Acts and Regulations, unless there is anything repugnant in the subject or context. We cannot read anything repugnant in the subject or context of Section 2(5) or 35(1)(c) or 38(11) of the Consumer Protection Act, 2019 to hold that the word in the singular, namely, “*consumer*” will not include the plural. G

37. We may take for example a case where a residential apartment is purchased by the husband and wife jointly or by a parent and child H

- A jointly. If they have a grievance against the builder, both of them are entitled to file a complaint jointly. Such a complaint will not fall under Section 35(1)(c) but fall under Section 35(1)(a). Persons filing such a complaint cannot be excluded from Section 2(5)(i) on the ground that it is not by a single consumer. It cannot also be treated as one by persons
- B falling under Section 2(5)(v) attracting the application of Order I Rule 8 CPC read with Section 38(11).

38. Therefore, the proper way of interpreting Section 35(1) read with section 2(5), would be to say that a complaint may be filed: *(i)* by a single consumer; *(ii)* by a recognised consumer Association; *(iii)* by one

- C or more consumers jointly, seeking the redressal of their own grievances without representing other consumers who may or may not have the same interest; *(iv)* by one or more consumers on behalf of or for the benefit of numerous consumers; and *(v)* the Central Government, Central Authority or State Authority.

39. It must be remembered that the provisions of the Consumer Protection Act are in addition to and not in derogation of the provisions of any other law for the time being in force, by virtue of Section 100. Even Section 38 which prescribes the procedure to be followed by the Commission for enquiring into the complaint, does not expressly exclude the application of the provisions of CPC. Though Sub-sections (9), (11) and (12) of Section 38 make specific reference only to a few provisions of the Code of Civil Procedure, the principle behind Order I Rule 1 enabling more than one person to join in a suit as plaintiff is not expressly excluded.

40. Therefore, we are of the considered view that while the
- F National Commission was wrong in this case, in the peculiar facts and circumstances in permitting an application under Section 35(1)(c) read with Order I Rule 8 CPC, it does not mean that the complaint filed by the respondents itself is liable to be thrown out. The complaint filed by the respondents may have to be treated as a joint complaint and not a complaint in a representative capacity on behalf of 1134 purchasers.
 - G The purchasers of other flats, such as the intervenors herein may join as parties to the consumer complaint, if they so desire. As a matter of fact, it is stated by the intervenors that pursuant to the impugned order, advertisements were issued and the intervenors have already filed impleadment application before the National Commission. They are
 - H entitled to be impleaded.

41. In view of the above, the appeal is allowed, the impugned order of the National Commission is modified to the effect that the complaint filed by the respondents shall be treated as a joint complaint filed on behalf of only the respondents herein and not as a complaint filed in a representative capacity on behalf of or for the benefit of all the owners of all the 1134 flats. Persons who wish to implead themselves as parties to the complaint filed by the respondents, may be allowed by the National Commission to do so, provided their grievance is also limited to the grievance as projected by the respondents in their consumer complaint. The intervenors herein, in view of what is stated in their application, shall also be allowed to be impleaded in the consumer complaint. The intervention application is closed with the above direction. There shall be no order as to costs.

Devika Gujral

Appeal allowed.