

A SOBHA HIBISCUS CONDOMINIUM

v.

MANAGING DIRECTOR, M/S. SOBHA DEVELOPERS
LTD. & ANR

B (Civil Appeal No.1118 of 2016)

FEBRUARY 14, 2020

**[MOHAN M. SHANTANAGOUDAR AND
R. SUBHASH REDDY, JJ.]**

- C *Consumer Protection Act, 1986: s.2(1)(d) and s.12(1) and its Explanation – Consumer – Meaning of – Appellant is a statutory body under the provisions of Karnataka Apartment Ownership Act, 1972 – It consisted of members of the apartments in a multi storey building as per the declaration of opposite party under the 1972 Act – Appellant filed complaint before National Commission –*
- D *Complaint resisted on the ground that the appellant is not a consumer within the meaning of Act, therefore, has no locus standi to file complaint – National Commission rejected the complaint holding that the appellant was not a recognised consumer association within the meaning of s.12(1)(b) of the Act – Held : Conjoint reading of the various relevant provisions of the 1972 Act and the Bye-laws of the Appellant- Condominium showed that appellant came into existence as per the mandatory provisions under the 1972 Act – Explanation to s.12 of the Act makes it clear that, the recognised consumer association as referred under s.12(1)(b) of the Act means any voluntary consumer association registered under the Companies*
- E *Act, 1956 or any other law for the time being in force – By applying Explanation, the appellant cannot be said to be a voluntary consumer association so as to maintain a complaint petition – A voluntary consumer association is a body formed by a group of persons coming together, of their own will and without any pressure or influence from anyone and without being mandated by any other provisions of law – Appellant which consists of members of flat owners in a building, which has come into existence pursuant to a declaration which is required to be made compulsorily under the provisions of 1972 Act, cannot be said to be a voluntary association – Further, it does not fall within the definition of ‘consumer’ as*
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defined under s.2(1)(d) of the Act –Karnataka Apartment Ownership Act, 1972. A

Dismissing the appeal, the Court

HELD: 1. To maintain a complaint under the provisions of the Act, complainant must be either a ‘consumer’ within the meaning of Section 2(1)(d) of the Act or it must fit into Section 12(1) of the Act. As per the Section 12(1)(a), a 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 can file a complaint. Under clause (b) of sub-section (1) of Section 12 of the Act, any ‘recognised consumer association’ whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not can file a complaint. As per the Explanation to Section 12 of the Act, ‘recognised consumer association’ means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force. It is clear from the Explanation that only a voluntary consumer association registered under the Companies Act, 1956 or any other law can maintain a complaint under Section 12(1)(b) of the Act. The Karnataka Apartment Ownership Act, 1972 is an Act of the State which is enacted with a view to provide for the ownership of an individual apartment in a building and to make such apartment heritable and transferable property and for matters connected therewith. As per Section 13 of the 1972 Act, Declarations, Deeds of Apartments and copies of floor plans are required to be registered under provisions of the Registration Act, 1908. The appellant body came into existence pursuant to clause (8) of the Declaration. [Paras 7-9][828-F; 829 E-H; 830 A-E]

2. A conjoint reading of the various relevant provisions of the 1972 Act and the Bye-laws of the Condominium would show that the appellant-body has come into existence as per the mandatory provisions under the 1972 Act. It is an Act to provide ownership of an individual apartment in a building and to make such apartment heritable and transferable property. The Explanation to Section 12 of the Act makes it clear that, the recognised consumer association as referred under Section

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- A 12(1)(b) of the Act means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force. By applying the said Explanation, the appellant cannot be said to be a voluntary consumer association so as to maintain a petition. Further, it will not fall within the definition of 'consumer' as defined under Section 2(1)(d) of the Act. In essence, a voluntary consumer association will be a body formed by a group of persons coming together, of their own will and without any pressure or influence from anyone and without being mandated by any other provisions of law. The appellant association which consists of members of flat owners in a building,
- B which has come into existence pursuant to a declaration which is required to be made compulsorily under the provisions of 1972 Act, cannot be said to be a voluntary association to maintain a complaint under the provisions of the Act. [Para 9][830 G-H; 832 D-F]
- C *Moulivakkam Trust Heights Flats Affected Buyers Association etc. v. M/s. Prime Sristi Housing Pvt. Ltd. & 29 Ors. Etc. 2017 SCC OnLine NCDRC 163 – relied on.*
Black's Law Dictionary IX Edn. – referred to.
- E CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1118 of 2016.
From the Judgment and Order dated 13.05.2015 of the National Consumer Disputes Redressal Commission at New Delhi in Complaint No. 153 of 2010.
- F Basava Prabhu S. Patil, Sr. Adv., Ashwani Kumar, S.P. Kamrah, Ms. Iti Sharma, Ms. Peeha Verma, Puneet Sharma, Rajesh Mahale, Shivendra Dwivedi, Syed Faizan Ali, Ms. Tejaswini Misra, Rachit Batra, Ms. Sunita Sharma, Rohit Vats, Daya Krishan Sharma, Anoop Kr. Srivastav, Shivkumar Gavalkar, R.N. Pareek, Vipin Kumar Saxena,
- G Shailesh Madiyal, Sudhanshu Prakash, Kartik Anand, Advs. for the appearing parties.

The Judgment of the Court was delivered by A

R. SUBHASH REDDY, J.

1. This civil appeal under Section 23 of the Consumer Protection Act, 1986 (for short, ‘the Act’), is filed by the complainant, aggrieved by the order dated 13.05.2015, passed by the National Consumer Disputes Redressal Commission (NCDRC), New Delhi in Consumer Complaint No.153 of 2010, rejecting the complaint filed by the appellant on the ground that, the appellant-Condominium has no *locus standi* to file the complaint since neither it is a ‘consumer’ nor it is a ‘recognised consumer association’ within the meaning of Section 12 of the Act.

2. The appellant/complainant is a statutory body under provisions of the Karnataka Apartment Ownership Act, 1972 (for short, ‘1972 Act’). It consists of members, who are the owners of the apartments in a multi- storey building, namely, “Sobha Hibiscus” situated in Amballipur Village, Varthur Hobli, of South Bangalore Taluk in Karnataka. The appellant-Condominium has come into existence pursuant to a declaration made by the opposite party under the provisions of 1972 Act. When the appellant has filed complaint claiming certain reliefs before the NCDRC, the same is resisted by the opposite party, by taking a preliminary objection that the complainant is not a ‘consumer’ within the meaning of the Act, therefore, has no *locus standi* to file the complaint. The NCDRC, by referring to relevant provisions of the Act, has recorded a finding that the complainant is not a ‘recognised consumer association’ within the meaning of Section 12(1)(b) of the Act.

3. We have heard Sri Rajesh Mahale, learned counsel appearing for the appellant and Sri Basava Prabhu S. Patil, learned senior counsel appearing for the respondent-opposite parties.

4. Learned counsel appearing for the appellant has contended that as per the provisions of the Act, any association registered under Companies Act, 1956 or any other law for the time being in force can maintain a complaint. It is submitted that all members of the appellant-Condominium are members who have purchased flats in the building named as “Sobha Hibiscus” and it is formed with a view to represent the grievances of its members before the authorities and the tribunal, as such, there is no reason or justification in rejecting the complaint by the NCDRC on the ground that it has no *locus standi* to maintain the complaint. In support of his argument, learned counsel has relied on a

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- A Full Bench judgment of the NCDRC, New Delhi in Consumer Case No. 560 of 2014 and batch titled Moulivakkam Trust Heights Flats Affected Buyers Association etc. v. M/s. Prime Sristi Housing Pvt. Ltd. & 29 Ors. etc.¹

5. On the other hand, Sri Basava Prabhu S. Patil, learned senior counsel appearing for the respondents, by taking us to relevant provisions of the 1972 Act and Consumer Protection Act, 1986, has submitted that the appellant cannot be said to be a voluntary consumer association, as per the provisions of the Act and it is also not a ‘consumer’ within the meaning of the Act. Learned counsel further submitted that the appellant is a body which has come into existence as per the declaration made by the opposite party, as required under the 1972 Act. It is submitted that as much as it is a body which has come into existence as per the mandatory provisions of the 1972 Act, as such, it cannot be said to be a voluntary consumer association. Further it is submitted that as the appellant will not fit into the definition of ‘consumer’ as defined under Section 2(1)(d) of the Act, complaint as filed, is not maintainable and there are no grounds to interfere with the impugned order passed by the NCDRC as the same is in accordance with law.

6. Having heard learned counsels on both sides, we have perused the impugned order and other material placed on record. After considering the submissions made by the learned counsels on both sides with reference to the provisions of the Consumer Protection Act, 1986 and the relevant provisions of the 1972 Act, we are of the view that there is no merit in this appeal so as to interfere with the impugned order, for the following reasons.

- F 7. To maintain a complaint under the provisions of the Act complainant must be either a ‘consumer’ within the meaning of Section 2(1)(d) of the Act or it must fit into Section 12(1) of the Act. The word ‘consumer’ is defined under Section 2(1)(d) of the Act which reads as under :

- G “2. Definitions.- (1) In this Act, unless the context otherwise requires,-
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(d) “consumer” means any person who,-

H ¹2017 SCC OnLine NCDRC 163

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or A
- (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose; C

Explanation,-For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment,” E

8. Section 12 of the Act deals with the manner in which complaint shall be made. As per the Section 12(1)(a), a 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 can file a complaint. Under clause (b) of sub-section (1) of Section 12 of the Act any ‘recognised consumer association’ whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not can file a complaint. As per the Explanation to Section 12 of the Act, ‘recognised consumer association’ means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force. It is clear from the Explanation that only a voluntary consumer association registered under the Companies Act, 1956 or any other law can maintain a complaint under Section 12(1)(b) of the Act. So as to consider whether F

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- A the appellant is a voluntary consumer association or not, it is necessary to refer to relevant provisions of the 1972 Act. The Karnataka Apartment Ownership Act, 1972 is an Act of the State which is enacted with a view to provide for the ownership of an individual apartment in a building and to make such apartment heritable and transferable property and for matters connected therewith. The appellant body has come into existence pursuant to a declaration made by the opposite party in terms of the 1972 Act. Section 3(j) of the 1972 Act defines ‘declaration’ as under:

“**3. Definitions.**-In this Act, unless the context otherwise requires.-

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- C (j) ‘**Declaration**’ means the instrument by which the property is submitted to the provisions of this Act, as hereinafter provided, and such Declaration as from time to time may be lawfully amended:”

- D As per Section 13 of the 1972 Act, Declarations, Deeds of Apartments and copies of floor plans are required to be registered under provisions of the Registration Act, 1908. A copy of the Deed of Declaration dated 22.05.2006 is placed on record and the same is a declaration under provisions of the said Act by the opposite party. The name of appellant body as “Sobha Hibiscus Condominium” has come into existence pursuant to clause (8) of the Declaration. The bye-laws framed by the appellant- Condominium are also placed on record. Bye-law No.5 of the Bye-laws deals with the Members of Association which reads as under :
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“5) MEMBERS OF ASSOCIATION:

- F 5.1) All persons who have purchased constructed Apartments in the “Sobha Hibiscus” shall execute respective declarations under Section 5(ii) of the Karnataka Apartment Ownership Act, 1972 submitting their Apartments to the provisions of the Act. All persons who become the owner of the Apartment, shall acquire 10 shares of the “Sobha Hibiscus Condominium” by paying Rs.1000/- and on acquisition, shall become the members of the “Sobha Hibiscus Condominium” and be bound by the Deed of Declaration and Exhibits thereto.”
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- H 9. On a conjoint reading of the various relevant provisions of the 1972 Act and the Bye-laws of the Condominium referred above, we are of the view that the appellant-body has come into existence as per the

mandatory provisions under the 1972 Act. It is clear from the objects of the said Act, that it is an Act to provide ownership of an individual apartment in a building and to make such apartment heritable and transferable property. In view of the mandatory provisions of the 1972 Act the appellant cannot be said to be a voluntary registered association for the purpose of filing a complaint before the competent authority under the provisions of the Act. The Explanation to Section 12 of the Act makes it clear that, the recognised consumer association as referred under Section 12(1)(b) of the Act means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force. By applying the said Explanation, the appellant cannot be said to be a voluntary consumer association so as to maintain a petition. Further, it will not fall within the definition of ‘consumer’ as defined under Section 2(1)(d) of the Act. The term ‘voluntary’ has been defined in Black’s Law Dictionary IX Edn. as under :

“voluntary, (14c) 1. Done by design or intention voluntary act. 2. Unconstrained by interference; not impelled by outside influence voluntary statement. 3. Without valuable consideration or legal obligation; gratuitous voluntary gift. 4. Having merely nominal consideration voluntary deed. Voluntariness”.

The term ‘voluntary’ as defined in Oxford Dictionary reads as under :

“2. Of an action: performed or done of one’s own will, impulse, or choice; not constrained, promoted, or suggested by another. Also more widely, left to choice, not required or imposed, optional. Of an oath, a confession, etc: voluntarily made or given; not imposed or prompted by a promise or threat. Of a conveyance, a disposition etc.: made without money or other consideration being given or promised in return. Growing wild or naturally; or spontaneous growth. Volunteer

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4.a. Assumed or adopted by free choice; freely chosen or undertaken; (of work) unpaid b. Brought about by one’s own choice or deliberate action; self-inflicted, self-induced. C. Of a society, association, etc.: entered into a free choice. Also consisting of volunteers.

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- A 5. Done by deliberate intent; designed, intentional
6. Of the will: free, unforced, unconstrained.
7. Of a person: acting from personal choice or impulse, willingly, or spontaneously, in a specified capacity. Also, endowed with the faculty of willing. B. Serving as a volunteer soldier. Also, composed of such volunteers.
- B 8. Freely or spontaneously bestowed or made; contributed from personal choice or impulse or from generous or charitable motives.
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- C 10. Of an institution, organisation, etc.: maintained or supported solely or largely by voluntary contributions. Also more widely, existing through voluntary support, not established by statute; in the UK, (of a school) built by a voluntary institution but maintained by a local education authority. B. of, pertaining to, or advocating voluntarism in respect of Church, schools, etc.”..
- D In essence, a voluntary consumer association will be a body formed by a group of persons coming together, of their own will and without any pressure or influence from anyone and without being mandated by any other provisions of law. The appellant association which consists of members of flat owners in a building, which has come into existence pursuant to a declaration which is required to be made compulsorily under the provisions of 1972 Act, cannot be said to be a voluntary association to maintain a complaint under the provisions of the Act.
- E 10. The learned counsel appearing for the respondents also relied on the very same judgment in the case of Moulibakkam Trust Heights Flats Affected Buyers Association etc.¹ In the aforesaid decision, a Full Bench of the National Commission has taken a view that even a Residents' Welfare Association, if registered under a statute will qualify as a consumer association under the provisions of Section 12 of the Act provided, it qualifies as a voluntary association.
- F 11. For the aforesaid reasons and in view of the reasons recorded in the impugned order by the NCDRC, we do not find any merit in this appeal so as to interfere with the same. The civil appeal is accordingly dismissed with no order as to costs.