$~59(Appellate)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CM(M) 1393/2017 & CM APPL. 44730/2017

TDI INFRASTRUCTURE LTD ..... Petitioner
Through: Ms.Kanika Agnihotri, Ms.Yashodhara Gupta, Mr.Vaibhav Agnihotri and Mr.Madhav Bhatia, Advs.

versus

UOI AND ANR ..... Respondents
Through: None

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT(ORAL)

% **20.05.2022**

1. This petition under Article 227 of the Constitution of India assails order dated 23rd November, 2017, passed by the learned National Consumer Disputes Redressal Commission (the learned NCDRC) in Consumer Complaint 1747/2016, alongwith IA/10846/2016 and IA/1063/2017 ***(Vinod Kumar Gupta & Anr. v. TDI Infrastructure Ltd.)*** filed therein.

2. It may be noted, here, that, of the two complainants before the learned NCDRC, Complainant 2 settled the matter with the petitioner and, therefore, the proceedings before the learned NCDRC survived only in respect of Complainant 1 Vinod Kumar.

3. The petitioner has impleaded the Union of India as Respondent

1 as certain omnibus directions are sought, expressing grievance regarding the manner in which applications under Section 12(1)(c) of the Consumer Protection Act, 1986 are being disposed of by the learned NCDRC. I do not propose in this petition to enter into the said larger issue. Accordingly, the UOI is deleted from the array of parties.

4. There is no appearance on behalf of the respondents after 5th April, 2022, when a Counsel had appeared consequent to issuance of court notice on 31st March, 2022. Thereafter, however, though the matter has been listed on 7th April, 2022, 13th April, 2022, 20th April, 2022 and 27th April, 2022, Respondent 2 has remained unrepresented. Today the matter was passed over once and was called out a second time. There is no appearance on behalf of either of the respondents today.

5. The issue in controversy is covered by my recent decision in ***Lucina Land Development Ltd. v. UOI***[1].

6. As such, I have heard Ms. Kanika Agnihotri, learned Counsel for the petitioner and perused the record, and proceed to dispose of the present petition.

7. These proceedings emanate from a complaint, filed by Respondent 2 and Mr. Sukumar Pattjoshi against the petitioner under Section 21(a)(i) read with Section 12(1)(c) of the Consumer Protection Act, 1986 ("the Act" hereinafter). The grievances as ventilated in the

[1] **2022 SCC OnLine Del 1274**

complaint were with respect to a township project of the petitioner, named "TDI City", at Kundli Sonipat, Haryana (hereinafter referred to as "the Project"). Admittedly, the project comprised housing units in various blocks, designated as Blocks A to L. The complainants were buyers of residential plots in the project. They complained, in the complaint, that the plots allotted to them were undeveloped and inhabitable and were lacking basic amenities.

8. The grievances in the complaint included (i) lack of clear title, complete licenses and statutory sanctions, with the petitioner, (ii) collection of amounts from the consumers in excess of the price reflected in the statement issued by the petitioner at the stage of allotment, which was represented, at that stage, to be the complete and final price, (iii) escalation of the price of individual plots several times on the ground that the External Developmental Charges (EDC) had been revised by the State of Haryana retrospectively, along with penalty, (iv) usage, by the petitioner, of a part completion certificate issued by the concerned authorities in Haryana, without specifying the part of the project in respect of which the certificate had been issued, (v) handing over of possession, by the petitioner, to a limited number of plot holders, confined to the front blocks of the various units, (vi) execution of an allegedly one sided plot buyer agreement by the petitioner, (vii) lack of development works since several years and (viii) lack of basic amenities such as water, electricity etc. at the site.

9. While ventilating these grievances, *the complaint does not contain any assertion to the effect that all these grievances were felt* *by all the purchasers of the residential plots in all the blocks of the project*. Nonetheless, an omnibus prayer was made in the complaint, for a direction to the petitioner to return the amounts collected from the complaints and all consumers of residential plots in the project. A holistic reading of the complaint makes it clear that it is completely bereft of specific particulars and is founded on generalised allegations.

10. Section 12(1)(c) of the Act allows filing of a representative complaint by one or more consumers, on behalf of numerous consumers *having sameness of interest*, with the permission of the jurisdictional consumer forum. "Complainant" is defined, in Section 2(1)(b)(iv) as meaning "one or more consumers where there are numerous consumers having the same interest". Section 12(1)(c) permits class action complaints to be filed, on behalf of consumers having "sameness of interest" thus:

> "***12. Manner in which complaint shall be made***.-
> (1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by-
>
> > *(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"*

11. The manner in which class action complaints under Section 12(1)(c) read with Section 2(1)(b)(iv) of the Act, may be filed, now stands regulated by the judgment of the Supreme Court in ***Brigade***

Enterprises Ltd. v. Anil Kumar Virmani[2]***.*** The judgment clearly holds that such a class action complaint may be filed only where there is "sameness of interest" of all the consumers who are purportedly represented by the limited complainants who have come to the Court. Paras 7 to 25, from ***Brigade Enterprises Ltd.***[2] merit reproduction thus:

> "**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;*
> >
> > *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;*
> >
> > *iii. Award cost of the Complaint to the Complainants; and/or*

[2] **(2022) 4 SCC 138**

> *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."*

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*
>
> *.*
>
> *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."

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.

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:

> *"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 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 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:

> *"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 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 Civil Procedure Code, 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.

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 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,—*
>
> *(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 expense, 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."

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;

(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;

(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;

(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.

(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.

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* v. *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.

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."

As such, in order to be able to maintain a complaint as a class action proceeding, on behalf of consumers who are not specifically named in the complaint, the complaint must necessarily contain requisite averments to indicate that all such consumers would have "sameness of interest".

12. The complaint in the present case does not satisfy this requirement. It merely sets out, in an omnibus fashion, the various alleged shortcomings in the project. Insofar as the justification for filing of the complaint as a class action proceeding under Section 12(1)(c) is concerned, the only assertion is to be found in para 19 which reads thus:

> "19. The present complaint is filed by complainants for themselves as consumers and for the benefit of all those affected plot holders/consumers, who share the common grievance and seek refund of their money against the OP builder for deficiencies and unfair trade practice with respect to its project *TDI city* at Kundli, Sonipat."

13. There are several imponderables in this paragraph. The complaint is stated to have been filed "for the benefit *of all those affected plot holders/consumers, who share the common grievance* ……..", without identifying the said plot holders/consumers. The assertion, even as worded, indicates that all plot holders/consumers who have invested in the project do not have the same grievance. Secondly, the nature of "the common grievance", held by the said affected plot holders/consumers, is also not identified, and a reading of the complaint reveals that it refers to several grievances. Where the complaint refers to several grievances, and seeks to invoke Section 12(1)(c) on behalf of "all those affected consumers who share the common grievance," necessarily, the compliant must identify the grievance as well as the consumers. Similarly, it is again asserted, in an omnibus fashion, that the said affected holders/consumers seek refund for deficiencies and unfair trade practice, without identifying the deficiencies consumer-wise or group of consumer-wise.

14. A class action complaint cannot be maintained by select consumers on behalf of a large number of unidentified consumers under Section 12(1)(c) of the Consumer Protection Act, in the absence of a specific averment that all such consumers have sameness of interest, the nature and specifics of which must which additionally, be identified in the complaint. That Sis the mandate of ***Brigade Enterprises Ltd.***[2] which, in my considered opinion, the complaint in the present case does not fulfil.

15. Section 21(a)(i) of the Act empowers the learned NCDRC to entertain complaints where the value of goods or services and compensation, if any, exceeds ₹ 1 crore. Where a class action complaint is permissible, the complaint could lie before the learned NCDRC where the value of goods and services in respect of all the consumers who may legitimately allowed to be represented in the class action proceeding exceeds ₹ 1 crore. In the present case, there is no dispute about the fact that the value of the goods/services, insofar as the two complainants who originally filed the complaint, namely Respondent 2 and Mr. Pattjoshi, was only ₹ 80,11,200/-, including interest. Once Mr. Pattjoshi had exited the complaint, consequent to settlement of his grievance with the petitioner, and the only surviving complainant remained Respondent 2, the value of the goods/services insofar as Respondent 2 was concerned was only ₹ 21,35,000/-. In either case, therefore, the value was less than the *de minimis* ₹ 1 crore, which would entitle the learned NCDRC to exercise jurisdiction.

16. Nonetheless, the complaint sought to justify invocation of the jurisdiction of the learned NCDRC, in para 20, thus:

> "20. The value of the plotted project comprised in these blocks at "TDI city" qua which the present complaint is being filed is several hundred crore of Rupees and this Hon'ble Commission is the only competent fora to try and entertain the present complaint."

17. Ms. Agnihotri submits that, if invocation of the jurisdiction of the learned NCDRC on such a ground is to be permitted, every case of grievances of allottees of units in housing projects would end up before the learned NCDRC, and the learned District Forums and the learned State Commission would be completely denuded of jurisdiction in all such cases.

18. There is substance in the submission. Clearly, the assertion in para 20 of the complaint does not justify invocation of the jurisdiction of the learned NCDRC. In order to invoke the jurisdiction of the learned NCDRC, the complainants would have to demonstrate that the value of goods and services in respect of all the consumers whom they can legitimately represent, and who have "sameness of interest" is in excess of ₹ 1 crore. The jurisdiction of the learned NCDRC could not be invoked merely on the basis of the value of the entire project. Para 20 of the complaint, therefore, invokes the jurisdiction of the learned NCDRC on a ground which is completely alien to Section 12(1)(b) as well as Section 2(1)(b)(iv).

19. I have already held, hereinabove, that the present complaint could not have been maintained as a class action proceeding, for want of requisite particulars in the complaint and in the light of the law enunciated in ***Brigade Enterprises Ltd.***[2]. The value of the goods/services in respect of the original complainants namely Respondent 2 and Mr. Pattjoshi being less than ₹ 1 crore, the complaint could not have been filed before the learned NCDRC.

20. The impugned order addresses this objection, as raised by the petitioner, thus:

> "The application has been opposed by the learned counsel for the OP who has pointed out that initially the complaint was filed by two persons. One of them, namely, complainant No.2 Mr. Sukumar Pattjoshi has already settled with the opposite party. Her submission is that the requirement of Section 12(1)(c) of the Consumer Protection Act, therefore, does not stand fulfilled. I, however, find no merit in the contention. A complaint under Section 12(1)(c) of the Consumer Protection Act on behalf or for the benefit of all the persons having same interest can be filed even by one consumer. Therefore, had the complaint been instituted only by the existing complainant, namely, Vinod Kumar Gupta on behalf or for the benefit of all the allottees having same interest in the subject matter of the complaint, it would still have been maintainable. As far as the community of interest is concerned, the complainant has to have the same with those

who are interested in all the reliefs sought in the complaint. Therefore, deletion of the name of Mr.Sukumar Pattjoshi on account of his settlement with the OP makes no difference as far as legal position is concerned. The complainant is, therefore, permitted to file this complaint on behalf or for the benefit of all such allottees of residential plots in Blocks A to L of the TDI City, Kundli who have not approached either this Commission or any other court/forum for the redressal of their respective grievances or have already not settled with the OP and who are interested in all the reliefs sought in this complaint."

21. The afore-extracted findings of the learned NCDRC are, with greatest respect, clearly unsustainable in the light of the law enunciated the ***Brigade Enterprises Ltd.***[2]**.** The learned NCDRC appears to have proceeded on the premise that there would necessarily be "sameness of interest" in respect of all the allottees in every block of the project. While arriving at this conclusion, the learned NCDRC appears to have, in turn, proceeded on the basis of the fact that the relief sought was omnibus.

22. As such, the finding of the learned NCDRC is that all consumers who seek a common relief can be represented by a select group of the said consumers, under Section 12(1)(c) of the Act. This, in my respectful view, is clearly in the teeth of the law enunciated in ***Brigade Enterprises Ltd.***[2]**.** What is required is not *sameness of relief* but *sameness of interest*. "Sameness of interest" would, in turn, require identity, or at least similarity, of the grievances of the consumers, qua the petitioner. In the absence of any specific pleading to the effect that all the consumers in all the blocks in the housing project had the same grievance against the petitioner, so as to make out a case of "sameness of interest", the complaint was, in my view, not maintainable under Section 12(1)(c) of the Act as a class action proceeding on behalf of all consumers of the project.

23. Once the application of Section 12(1)(c) is ruled out, the complaint is no longer maintainable before the learned NCDRC, as the cumulative value of the goods/services, with which the impleaded complainants were concerned, even if added, was less than ₹ 1 crore.

24. A similar issue had come up before this Court in ***Lucina Land Development Ltd.***[1]. On facts as well as in law, the present case appears to be wholly covered by the said decision.

25. Following the abovenoted precedents and on the basis of the averments in the complaint, therefore, the impugned order dated 23rd November, 2017, passed by the learned NCDRC, is quashed and set aside. Consumer Complaint No. 1747/2016, filed by Respondent 2 before the learned NCDRC would also stand dismissed. However, this would not operate as a fetter to Respondent 2 moving an appropriate complaint before the competent forum in accordance with law if so advised.

26. The petition accordingly stands allowed in the aforesaid terms with no orders as to costs.

C. HARI SHANKAR, J

MAY 20, 2022/kr