

SAINATH

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 15619 OF 2025
WITH
WRIT PETITION NO. 15552 OF 2025**

M/s. Shreekrupa Builders ..Petitioners
through its Partners

Versus

Shri. Govind Dham CHSL ...Respondent

Mr. Nihant Panicker (through VC), a/w Ms. Aishwarya Pillai,
for Petitioners.

CORAM: N. J. JAMADAR, J.

DATE : 16th DECEMBER 2025

P.C.:

1. Heard the learned Counsel for the parties.
2. These petitions under Article 227 of the Constitution of India assail a common judgment and order dated 29th July, 2025 passed by the State Consumer Disputes Redressal Commission, Maharashtra in Revision Petition No. RP/24/19 thereby dismissing the revision petition preferred by the petitioners against the order dated 27th December, 2023 passed by the District Consumer Disputes Redressal Commission, Thane in Execution Application No. EA/10/146.

3. By the said order dated 27th December, 2023, the District Commission rejected an application to direct the complainant to lead oral evidence, and another application filed by the accused-petitioners for discharge on the premise that, the judgment and order passed by the District Consumer Disputes Redressal Forum on 24th March, 2010 in complaint case No. CC/658/2009, was without jurisdiction.

4. The Respondent had filed a complaint under Section 12 of the Consumer Protection Act, 1986 seeking compliance of the statutory obligations of the petitioners/promoters. By the judgment and order dated 28th March, 2010, the said complaint was partly allowed and the petitioners were directed to procure occupation certificate for building Nos. A, B, C, D, and E in Govind Dham Co-operative Housing Society, from the Planning Authority, and execute a conveyance, and pay compensation of Rs. 25,000/- (Rupees Twenty Five Thousand) on account of harassment and mental agony.

5. Indisputably, the said order was not challenged by the petitioners. Alleging disobedience of the said order, the respondent filed Execution Application No. EA/10/146. The petitioners, it seem, thereafter started raising objections to the

execution of the judgment and order passed by the District Forum. An application was preferred seeking direction to the complainant to lead oral evidence, though an affidavit in lieu of examination-in-chief was already filed. Another application for discharge was also filed on the ground that, the Respondent No. 1 society was not a 'consumer' within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986. Both the District Forum and State Commission have repelled the objections sought to be raised by the petitioners.

6. Mr. Panicker, the learned Counsel for the petitioners, submitted that, both the District Forum as well as the State Commission committed grave error in law in rejecting the objection to the continuation of the execution proceeding, without properly evaluating the jurisdictional challenge. It was submitted that, in view of the decision of the Supreme Court in the case of **Sobha Hibiscus Condominium Vs. Managing Director, Sobha Developers Ltd. & Anr.**¹, the Respondent society was not a consumer within the meaning of Section 2(1)(d) of the Act, 1986. Resultantly, the judgment and order dated 24th March, 2010 passed by the Consumer Forum, Thane was sans jurisdiction and, thus, its nullity could be raised at any stage.

1 (2020) 11 SCC 328

7. The submissions appear to be as wrongly premised on facts and grounded in law. From the perusal of the material on record, it becomes evident that, occupants of the building had also approached the Consumer Forum, in addition to Respondent Society, in their individual capacity. The petitioners have flagrantly violated their statutory obligations for over 20 years. In fact, as noted by the State Commission, the issue of jurisdiction was raised by the petitioners at an earlier point of time and it was rejected.

8. The judgment in the case of **Sobha Hibiscus Condominium Vs. Managing Director, Sobha Developers Ltd. & Anr. (supra)**, dealt with a situation where under the Karnataka Apartment Ownership Act, 1972, it was obligatory to register the condominium. The Supreme Court thus held that, the condominium cannot be said to be a Voluntary Consumer Association so as to maintain a petition.

9. It is pertinent to note, in the said decision a reference was made to a Full Bench judgment of the National Consumer Disputes Redressal Commission in the case of **Moulivakkam Trust Heights Flats Affected Buyers Association Vs. M/s. Prime**

Sristi Housing Pvt. Ltd. & Ors², wherein the Commission had held that, a Residents Welfare Association, a co-operative society or an Association of Flat/Plot Buyers or a company, if it qualifies the conditions stipulated in the said judgment, will also be a Voluntary Consumer Association. The Supreme Court did not disapprove the view of the Full Bench of the National Commission that even a Residents Welfare Association, if registered under a statute, will qualify a Consumer Association under the provisions of Section 12 of the Act provided it qualifies as a voluntary association.

10. The State Commission was, thus, justified in returning the finding that, the issue had been raised and decided against the petitioners, and the executing Court was not the forum before which the said issue could have been again agitated.

11. The objection as regards the procedure adopted by the District Commission in the execution application is wholly unsustainable. The District Commission has noted that, the evidence by way of examination-in-chief had already been filed and the matter was posted for recording cross-examination of the complainant's witness. No right vests in the petitioners-

accused to insist for the oral examination-in-chief. This sort of objections betray the devices adopted by the petitioners to delay and defeat the judgment and order passed by the District Consumer Forum, Thane in Complaint case No. CC/658/2009 in the year, 2010.

12. No fault, thus, can be found with the observations of the State Commission that, the petitioners were resorting to litigative stratagem to delay and frustrate the execution, and keep the complainant away from the fruits of decree. Resultantly, the petitions do not deserve to be entertained.

13. The petitions thus stand **dismissed**.

[N. J. JAMADAR, J.]