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

Reserved on: 13.07.2026
Date of Decision: 24.07.2026

\+ CM(M) 1248/2022, CM APPL. 49631/2022, CM APPL. 20963/2025, CM APPL. 20964/2025 & CM APPL. 29491/2026

DLF HOMES PANCHKULA PVT LTD .....Petitioner

Through: Mr. Pinaki Misra, Sr. Adv. with Ms. Seema Sundd, Mr. Pravin Bahadur and Mr. Prabhat Ranjan, Advs.

versus

SURINDER PAL SINGH & ORS. .....Respondents

Through: Mr. Sudhir Kathpalia, Adv.
Mr. Narender Kumar Sharma and Ms. Suman Sharma, Advs. for R-2 & 68. (through VC)

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

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Factual Matrix

1. The present petition under Article 227 of the Constitution of India has been filed by DLF Homes Panchkula Private Limited assailing the order dated 12.10.2022 passed by the learned National Consumer Disputes Redressal Commission[1] in I.A. No. 4407/2022 in Consumer Complaint No. 1962/2017. By the impugned order, the learned NCDRC dismissed the application filed by the petitioner

[1] Hereinafter "NCDRC"

questioning the maintainability of the consumer complaint as a representative complaint under Section 12(1)(c) of the Consumer Protection Act, 1986[2] (Presently Section 35(1)(c) of the Consumer Protection Act, 2019[3].

2. The dispute arises out of a residential project known as "The Valley", situated at Panchkula, Haryana, and developed by the petitioner. The project was launched in the year 2010 and comprises 1,799 residential units. Upon obtaining the requisite occupation certificate, possession of the units was offered to the allottees during 2016 and 2017 and that possession of 1,733 units had been taken by the respective allottees.

3. On 12.07.2017, three allottees instituted Consumer Complaint No. 1962/2017 before the learned NCDRC against the petitioner. The complaint was accompanied by I.A. 10286/2017 under Section 12(1)(c) of the 1986 Act read with Order I Rule 8 of the Code of Civil Procedure, 1908[4], seeking permission for joint petition as the Complainants have joint interest and for other allottees of the project "The Valley". The prayer sought in this application is reproduced as under:

> "a. Allow the present application in the interest of justice as the complainants have similar interest in the present proceeding and seeking relief of similar nature and other allotees of "THE VALLEY PANCHKULA PROJECT (Haryana)";
> b. Allow publication of the notice of the matter to all the allottees of the project "THE VALLEY PANCHKULA PROJECT (Haryana)" and impleading them as parties seeking reliefs of similar nature before this Hon'ble Commission;"

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[2] Hereinafter "1986 Act"
[3] Hereinafter "2019 Act"
[4] Hereinafter "CPC"

4. The Consumer Complaint No. 1962/2017 alleged, *inter alia*, delay in completion of the project and delivery of possession, and questioned certain demands raised by the petitioner. The complainants sought, amongst other reliefs, delivery of physical and legal possession of the respective units in accordance with the apartment buyers' agreements, compensation for delayed possession, issuance of the occupation certificate and other requisite approvals; setting aside of the demand raised towards increase in the saleable area, compensation for the alleged deficiency in service, litigation costs; and consequential reliefs. The application under Section 12(1)(c) proceeded on the assertion that these grievances and reliefs were common to the allottees sought to be represented.

5. The petitioner filed its written version to the consumer complaint as well as a reply opposing the application under Section 12(1)(c). The petitioner disputed the allegations of deficiency in service and, amongst other objections, questioned the existence of a common interest amongst all the allottees and the maintainability of the complaint in a representative capacity.

6. The learned NCDRC *vide* order dated 23.05.2018 allowed the application under Section 12(1)(c) and permitted Consumer Complaint No. 1962/2017 to proceed as a representative complaint. Consequential directions were issued for publication of notice in terms of the procedure applicable to representative proceedings. The relevant portion from the said order passed by the NCDRC is reproduced as under:

> "5. On careful perusal of the complaint, it transpires that Brig. Beant Parmar and two others have filed the instant complaint on behalf of themselves as also other similarly placed consumers who had booked apartments in the subject project having same

interest and they have also sought relief on behalf of all such consumers so interested in the outcome of the complaint. Perusal of the prayer clause of the complaint would show that relief has also been sought not only on behalf of the complainants who are party to the complaint but on behalf of other similarly placed consumers having same interest in the outcome of the complaint. Therefore, in my view, requirement of Section 12 (1) (c) of the Act are fulfilled in this case and this is a fit case for grant of permission under section 12 (1) (c) of the Act.

6. Counsel for the opposite party developer has contended that application is liable to be dismissed as there is no commonality of interest amongst the complainants and other allottees of the project. Expanding on the argument, learned counsel has submitted that bare reading of the complaint would demonstrate that complainants do not have commonality of interest with all other consumers who had booked apartments in the subject project. It is submitted that there are two different sets of allottees in the project (a) Non Government Employees and (b) Government Employees, the difference being that government employees as per the allotment agreement are entitled to additional rebate of 5% on basic sale price. I do not find merit in this contention. Difference in price payable by the respective consumers by no stretch of imagination would make them two different classes of consumers so far as relief sought in the complaint is concerned. It is further submitted that large number of allottes in the project have filed complaints in the State Commission. Therefore, they do not stand on same footing as that of three complainants. The submissions of learned counsel for the opposite parties is misconceived because bare reading of Section 12 (1) (c) of the Act would show that one or more consumers can file the consumer complaint subject to fulfilment of requisite condition on behalf of or for the benefit of all the consumers so interested. If some of the consumers have opted to file independent complaints, it would not make other consumers who are not arrayed as complainants not so interested in the outcome of the complaint. Similarly, it is contended that about 770 allottees in the project have already taken over possession and conveyance deeds in favour of 160 allottees out of them have been executed. If at all it is accepted, then all other similarly placed allottees would have some interest in the outcome of the complaint. Therefore, on their behalf class action complaint can be filed. Thus, I do not find merit in the objection of the opposite party. In view of the above, I allow the application under section 12 (1) (c) of the Act and permit the complainants to proceed with the complaint as a class action.

7. In view of the mandate of Section 13 (6) of the Act, I direct that the public notice of this complaint be issued under Order 1 Rule 8 C.P.C in the newspapers “Times of India” (English edition)

and "Navbharat Times" (Hindi Edition). Complainants to take steps for publication.

.8. Complaint is admitted. Opposite Party to file written statement within 30 days from today with advance copy to the complainants.

List on 23.10.2018. Rejoinder, if any, be filed in the meanwhile."

7. On 28.05.2018, the learned NCDRC disposed of another representative complaint pertaining to the same project, being Consumer Complaint No. 82/2017, titled ***Surinder Pal Singh and 56 Others v. DLF Homes Panchkula Private Limited & Anr.***. While doing so, the complainants therein were granted liberty to seek impleadment in Consumer Complaint No. 1962/2017 or to avail such other remedies as were available to them in law. The operative portion of the order dated 28.05.2018 in Consumer Complaint No. 82/2017 is reproduced here for reference:

> "10. In view of the discussion above, I am of the opinion that this is not a fit case for grant of permission under section 12 (1) (c) of the Act. Application is accordingly dismissed. As the complainants have refused to amend the complaint to restrict it only to one class of the complainants seeking similar relief, the complaint is dismissed as not maintainable because of misjoinder of parties and causes of action. It is pertinent to note that permission under section 12 (1) (c) of the Act has already been granted to the complainants in Brig. Beant Parmar & Anr. Vs. DLF Homes Panchkula Pvt. Ltd. in Consumer Complaint No. 1962 of 2017 relating to the same project. Therefore, it is clarified that complainants in this case shall be at liberty to get impleaded in Consumer Complaint No. 1962 of 2017, if they so desire. or avail of the legal remedy available under law."

8. Thereafter in the proceedings of Complaint No. 1962/2017, the petitioner filed Review Application No. 169/2018 on 05.06.2018, seeking review of the order dated 23.05.2018. The review application was dismissed by the learned NCDRC on 08.06.2018, upon finding no error apparent on the face of the record.

9. The petitioner also challenged the order dated 23.05.2018 before this Court in ***CM(M) 683/2018***. The Court *vide* order dated 16.07.2018, stayed the operation of the order dated 23.05.2018. The relevant portion of the order passed by this Court is reproduced as under:

> "The matter is indicated to be listed for 24.09.2018 and taken up on CM APPL. 27639/2018, an application filed on behalf of the petitioner seeking to bring on record subsequent developments apart from inter alia seeking a stay of the proceedings pending before the National Consumer Disputes Redressal Commission in CC No.1962/2017 submitting to the effect that the Review Petition No.169/18 filed by the petitioner seeking a review of the order dated 23.05.2018 pursuant to proceedings dated 31.05.2018 of this Court, has already been dismissed.
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> Notice of the petition and of CM APPL. 27639/2018 be issued to the respondent nos.2 to 4 on taking of steps by the petitioner, process returnable on 24.09.2018.
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> In the meantime, the operation of the order dated 23.05.2018 of the National Consumer Disputes Redressal Commission is stayed.
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> Copy of the order be given Dasti, as prayed."

10. The complainants thereafter approached the Hon'ble Supreme Court against the order dated 16.07.2018 through ***SLP (Civil) Diary No. 4883/2019***. The Hon'ble Supreme Court *vide* order dated 15.02.2019, vacated the interim stay granted by this Court. The relevant portion of the order passed by the Supreme Court is reproduced for reference:

> "In the present matter, by order dated 23.05.2018, the National Consumer Disputes Redressal Commission accepted the submission of the present petitioners and granted them permission to proceed with the complaint as a class action and also directed that public notice be issued under Order 1 Rule 8 of the Code of Civil Procedure, 1908, in the newspapers "Times of India" (English Edition) and "Navbharat Times" (Hindi Edition). The matter was directed to be listed on 23.10.2018.
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> Respondent no.1 thereafter carried the matter by way of a petition under Article 227 of the Constitution of India in the High Court of Delhi at New Delhi. The High Court vide its order dated

> 16.07.2018 stayed the operation of the order passed by the National Commission, which order is presently under challenge.
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> The submission of the petitioners is that though the order was passed on 16.07.2018, a copy of the order was served on them sometime on 24.08.2018 by which time the advertisements were already published in the newspaper.
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> Issue notice.
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> Pending further consideration, we stay operation of the order dated 16.07.2018 passed by the High Court, as a result of which the order dated 23.05.2018 passed by the National Commission shall become fully operative.
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> We direct the parties to appear before the National Commission on 19.02.2019 i.e. the date on which the matter is listed.
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> Let further proceedings be taken to the logical conclusion by the National Commission. In case, for any reason, the present petitioners wish to withdraw from the proceedings, appropriate number of applicant(s) can be substituted in their place and the matter shall be proceeded on merits. Considering the fact situation in the present matter, we request the National Commission to conclude the proceedings as expeditiously as possible."

11. During the pendency of Consumer Complaint No. 1962/2017, the three original complainants arrived at settlements with the petitioner. By an order dated 30.05.2019, their names were deleted from the array of parties.

12. By the same order dated 30.05.2019, the learned NCDRC allowed several applications filed by other allottees seeking impleadment in the Consumer Complaint No. 1962/2017. The impleadment was made subject to the applicants satisfying the certain conditions and the substituted complainants were also directed to file an amended memo of parties. The relevant portion of the order is reproduced as under:

> "The applicants claim to be allottees in the project to which this complaint pertains. They are impleaded as parties to this complaint provided that (i) they are interested in all the reliefs sought in this complaint (ii) they have no other grievance against the OP (iii) their allotments have not been cancelled and (iv) they have already not approached either this Commission or any other Court/Forum

for the redressal of their grievances. The applications stand disposed of."

13. ***CM(M) 683/2018*** was thereafter dismissed as withdrawn by this Court on 13.08.2019. Consequent thereto, the proceedings before the Hon'ble Supreme Court arising from the interim order passed in that petition were also disposed of as having become infructuous.

14. On 08.11.2019, further applications for impleadment were allowed by the learned NCDRC in terms of the conditions contained in the order dated 30.05.2019.

15. The proceedings thereafter continued before the learned NCDRC and, on 19.05.2022, the petitioner filed I.A. No. 4407/2022 questioning the maintainability of Consumer Complaint No. 1962/2017 in the form in which it was then being prosecuted. In support of the application, the petitioner relied upon the decision of the Hon'ble Supreme Court in ***Brigade Enterprises Limited v. Anil Kumar Virmani & Ors.***[5], wherein it was held that sameness of interest constitutes the *sine qua non* for maintaining a representative complaint under Section 12(1)(c) of the 1986 Act. Reliance was also placed upon the decision of this Court in ***Lucina Land Development Ltd. v. Union of India & Ors.***[6], which reiterated the necessity of establishing sameness of interest amongst the consumers sought to be represented. On this basis, the petitioner contended that the subsequently impleaded complainants did not constitute a homogeneous class, that their respective factual positions were materially different, and that the complaint, in light of the aforesaid decisions, was not maintainable

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5 ***(2022) 4 SCC 138***

6 ***2022 SCC OnLine Del 1274***

under Section 12(1)(c) and was liable to be dismissed at the threshold. The prayer sought in this application is reproduced as under:

> "i. to hear and determine the admissibility and maintainability of the present Complaint before proceeding further with the matter;
> ii. to hold that there is no sameness of interest in the class sought to be represented, or even amongst the 70 complainants arrayed as parties to the present complaint;
> iii. to hold that the present complaint cannot be allowed as a class action complaint under section 12(1)(c), on account of lack of sameness of interest;
> iv. to hold that the pecuniary value of individual complainants or even the average value of the apartment is below the pecuniary jurisdiction of this Hon'ble Commission;
> v. to dismiss the present complaint for lack of pecuniary jurisdiction; and/ or
> vi. pass any such other order/orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case."

16. In particular, the petitioner sought to distinguish between allottees who had already taken possession, subsequent purchasers, persons in whose cases possession had been offered without delay, persons who had entered into settlements with the petitioner, persons who had accepted payments or compensation, persons who had executed conveyance deeds, persons who had sold or let out their units and persons who had already pursued proceedings before other consumer forums. On that basis, it was contended that the substituted complainants neither possessed the same interest nor remained interested in all the reliefs originally sought in the complaint.

17. The learned NCDRC on 23.05.2022, directed the complainants to file a reply to I.A. No. 4407/2022. They were also directed to place on record a chart containing complainant-wise particulars with reference to the objections raised by the petitioner. After the reply was filed, the petitioner was granted an opportunity, by an order dated 06.07.2022, to file a rejoinder.

18. During the subsequent hearing, the complainants stated that they did not propose to press all the reliefs originally sought in Consumer Complaint No. 1962/2017 and that they would confine their claims to the issue of interest on delayed possession and excess saleable area. The said statement was recorded by the learned NCDRC in its order dated 27.07.2022.

19. Pursuant to the earlier directions of the learned NCDRC, the complainants filed a chart dated 13.08.2022, setting out the particulars and status of the respective complainants.

20. Arguments on I.A. No. 4407/2022 were heard by the learned NCDRC and *vide* impugned order dated 12.10.2022, the learned NCDRC dismissed I.A. No. 4407/2022. The learned NCDRC recorded that the three original complainants had withdrawn from the proceedings after settling their disputes and that several other allottees had thereafter been impleaded. It further recorded that, although 85 persons had been impleaded at one stage, 71 complainants remained before it.

21. The learned NCDRC also recorded that possession had been delivered to and accepted by the complainants then before it. It, however, held that the surviving claims for compensation on account of delayed possession and in relation to the increased saleable area disclosed sufficient sameness of interest to permit the complaint to continue as a representative proceeding.

22. In relation to persons who had transferred their units after seeking impleadment, the learned NCDRC observed that their rights were required to be considered with reference to the date on which they had joined the proceedings and that a subsequent transfer would not, by itself, defeat the claim. As regards persons who had entered into settlements, the learned NCDRC observed that such persons could not reopen disputes which had already been settled.

23. The learned NCDRC further observed that, even if some of the complainants did not fall within the definition of "consumer", they could not be denied the benefit of a judgment passed in a representative complaint. Having rejected the petitioner's objection to maintainability, the learned NCDRC listed the consumer complaint for final hearing.

24. Aggrieved by the order dated 12.10.2022, the petitioner instituted the present petition. When the petition was taken up on 20.12.2022, Mr. Pinaki Misra, learned Senior Counsel for the petitioner submitted that there was no commonality or sameness of relief amongst the respondents; that possession of the units had been received by the respondents; that the surviving claims would require individual examination; and that the reliefs originally claimed could not have been given up merely on the basis of a statement made by counsel in the representative proceedings.

25. This Court also noticed the observation of the learned NCDRC that even persons who did not fall within the definition of "consumer" could derive the benefit of a judgment passed in the representative complaint. A *prima facie* view was expressed that the said observations required consideration and this Court requested the learned NCDRC to defer the final hearing to a date beyond the next date fixed by this Court.

26. The order dated 20.12.2022 was challenged by some of the respondents before the Hon'ble Supreme Court in ***SLP(C) No. 8368/2023***. On 04.05.2023, the Hon'ble Supreme Court issued notice and stayed the operation of the order dated 20.12.2022 until further orders.

27. The SLP was thereafter taken up on 07.11.2023. The Supreme Court observed that the proceedings before it arose out of an interlocutory order and disposed of the SLP with a request to this Court to decide the present petition expeditiously, preferably within six months. The parties were directed not to seek adjournments. The Hon'ble Supreme Court further requested the learned NCDRC not to proceed further with Consumer Complaint No. 1962/2017 until the present petition was decided by this Court.

28. It is in the aforesaid background that the challenge to the order dated 12.10.2022 passed by the learned NCDRC falls for consideration in the present petition.

Submissions on behalf of the petitioner

29. Mr. Pinaki Misra, learned Senior Counsel submits that the very foundation of a representative complaint under Section 12(1)(c) of the 1986 Act is the existence of numerous consumers having the same interest. The expression *"same interest"*, according to him, is not a matter of form, nor can it be inferred merely because all the persons concerned had purchased units in the same project or seek some form of monetary compensation from the same developer. The requirement is substantive and mandates that the consumers represented in the proceedings must constitute an identifiable and homogeneous class having the same grievance arising from the same deficiency in service.

30. Learned Senior Counsel points out that, though 85 allottees had initially been impleaded in Consumer Complaint No. 1962/2017, only 49 of them presently remain, the disputes of the others having been

settled during the pendency of the proceedings. He submits that the progressive alteration in the composition of the complainant body is significant, as the complaint is no longer being prosecuted by the three original complainants who had framed its pleadings and reliefs. The allottees subsequently brought on record have not amended the complaint to disclose how their respective grievances are identical or how they remain interested in all the reliefs on the basis of which permission under Section 12(1)(c) was originally granted.

31. Mr. Misra submits that the surviving complainants fall within several distinct categories and cannot be treated as members of one homogeneous class. Some allottees received possession after varying periods of delay and continue to retain their units; some accepted delay compensation offered by the petitioner; some are subsequent purchasers who acquired their units after possession had already been offered to the original allottees; some have executed conveyance deeds; some have sold or otherwise transferred their units; while others had either entered into settlements or pursued proceedings before other forums. Each of these circumstances, according to him, bears directly upon the existence and extent of the individual allottee's grievance and entitlement, if any, to compensation. The determination of the claim would, therefore, necessarily require an allottee-wise examination of the date of allotment, contractual terms, date of offer and acceptance of possession, period of delay, payments made, compensation accepted, subsequent transfer and prior settlement or adjudication.

32. It is submitted that a common circumstance capable of giving rise to similar causes of action does not, by itself, establish *sameness of interest*. The mere fact that several allottees may allege delay in

delivery of possession cannot place them in the same class where the periods of delay differ materially and their subsequent conduct and legal position are distinct. Equally, the circumstance that the surviving complainants may ultimately seek monetary compensation cannot cure the absence of identity in the underlying grievances. According to learned Senior Counsel, the learned NCDRC has effectively treated a similarity in the eventual relief as equivalent to sameness of interest, which is contrary to the statutory scheme.

33. In this regard, learned Senior Counsel places considerable reliance on the decision of the Hon'ble Supreme Court in ***Brigade Enterprises (Supra)***. He submits that the Supreme Court has drawn a clear distinction between a complaint filed jointly by a few consumers for redressal of their own grievances and a complaint filed in a representative capacity on behalf of numerous consumers. It was held that *"sameness of cause of action"* is not synonymous with *"sameness of interest"* and that the latter must be borne out from the pleadings and the reliefs sought in the consumer complaint.

34. Learned Senior Counsel further submits that ***Brigade Enterprises*** recognises that, where a few consumers desire to pursue their own grievances jointly without representing the entire body of consumers, the appropriate course is to institute a joint complaint under Section 12(1)(a) of the 1986 Act (Presently Section 35(1)(a) of the 2019 Act), rather than invoke Section 12(1)(c). Thus, even if the respondents presently before this Court desire to pursue their individual claims together, they may do so through a properly constituted joint complaint confined to their own grievances. They cannot, however, continue to prosecute the present complaint as a representative action and bind persons whose grievances and factual

circumstances are not the same. The Supreme Court had itself, upon finding the representative character of the complaint before it unsustainable, directed that it be treated as a joint complaint confined to the actual complainants, while permitting other persons to seek impleadment only if their grievance was limited to the grievance projected in the complaint.

35. Reliance is also placed on ***Lucina Land Development Ltd. (Supra)***, wherein this Court applied the principles enunciated in ***Brigade Enterprises***. Mr. Misra submits that ***Lucina Land Development*** holds that sameness of interest must be manifest from the pleadings themselves, so that the consumer forum is able to identify the consumers whose cause is sought to be represented and ascertain that the grievance and the alleged deficiency in service are identical *qua* each of them. A common interest in the eventual outcome of the complaint, or an omnibus prayer for a similar relief, would not satisfy the statutory requirement. The sameness must relate to the underlying grievance and the deficiency alleged against the service provider.

36. Applying the aforesaid principles to the present case, learned Senior Counsel submits that the pleadings framed by the three original complainants cannot establish sameness of interest amongst the 49 allottees who now remain. The original complainants had not taken possession and had, *inter alia*, sought delivery of possession, whereas the subsequently impleaded allottees occupy materially different positions. The attempt made before the learned NCDRC on 27.07.2022 to confine the complaint to delayed-possession compensation and the demand towards increased saleable area could not retrospectively create a homogeneous class. On the contrary, the

abandonment of the other reliefs demonstrates that the subsequently impleaded complainants were not interested in all the reliefs originally claimed and did not satisfy the first condition imposed by the learned NCDRC in its order dated 30.05.2019.

37. Mr. Misra also relies upon the decisions of this Court in ***DLF Homes Rajapura Pvt. Ltd. v. Union of India & Anr.***[7], ***DLF Homes Rajapura Pvt. Ltd. v. Union of India & Ors.***[8] and ***DLF Homes Rajapura Pvt. Ltd. v. Amardeep Singh Tiwana & Ors.***[9]. It is submitted that these decisions consistently apply the principles enunciated in ***Brigade Enterprises*** and ***Lucina Land Development*** and recognise that, where the statutory requirement of sameness of interest is not met, the complaint cannot be permitted to continue in its representative form. At the same time, the consumers remain at liberty to institute a properly constituted class action, joint complaint or individual proceedings, as may be permissible in law.

38. Learned Senior Counsel assails, in particular, the reasoning contained in paragraphs 6, 7 and 8 of the impugned order. He submits that, despite noticing both ***Brigade Enterprises*** and ***Lucina Land Development***, the learned NCDRC failed to apply the test laid down therein. Instead of examining whether the pleadings disclosed an identical grievance and deficiency in service *qua* each surviving complainant, the learned NCDRC proceeded on the premise that the availability of a claim for compensation to all the complainants was sufficient to establish sameness of interest. Such an approach, according to him, reverses the statutory test by treating the relief as the

[7] ***CM(M) 100/2018***
[8] ***CM(M) 1333/2019***
[9] ***CM(M) 572/2022***

source of sameness, whereas the sameness must exist in the underlying interest and grievance.

39. Mr. Misra further submits that the learned NCDRC failed to examine whether the subsequently impleaded allottees complied with the four express conditions subject to which impleadment had been permitted on 30.05.2019. Persons who had already settled their disputes, approached another court or forum, or were not interested in all the reliefs claimed could not have been allowed to continue as members of the representative class. The objections raised by the petitioner in I.A. No. 4407/2022 were supported by complainant-wise particulars identifying the separate categories of allottees; yet, the impugned order contains no meaningful consideration of the effect of these distinctions.

40. Learned Senior Counsel lastly takes exception to the observation in the impugned order that, even if some of the complainants did not fall within the definition of "consumer", they could not be denied the benefit of a judgment passed in a class-action complaint. He submits that the said observation is fundamentally contrary to the jurisdictional scheme of the 1986 Act. The jurisdiction of a consumer forum can be invoked only by a person who answers the statutory description of a consumer in respect of a consumer dispute. The procedure of a representative complaint cannot confer substantive consumer status upon a person who does not otherwise possess it, nor can a relief which is unavailable directly be obtained indirectly through the medium of a class action.

41. On the aforesaid premises, Mr. Misra submits that the impugned order suffers from a patent failure to apply the jurisdictional pre-requisites contained in Section 12(1)(c) of the 1986 Act. He

accordingly prays that the order dated 12.10.2022 be set aside and that Consumer Complaint No. 1962/2017 be held incapable of proceeding in its existing representative form, while leaving the surviving complainants at liberty to pursue such joint, individual or properly constituted representative remedy as may be available to them in accordance with law.

Submissions on behalf of the respondents

42. Mr. Sudhir Kathpalia, learned Counsel for the respondents, submits that the principal question sought to be raised by the petitioner, which is whether Consumer Complaint No. 1962/2017 could proceed as a representative complaint under Section 12(1)(c) of the 1986 Act, had already attained finality in the earlier round of proceedings. According to him, it is not open to the petitioner to reagitate the same issue at the stage of final adjudication of the consumer complaint by characterising the subsequent changes in the array of complainants as a fresh question of maintainability.

43. Learned Counsel refers, in this regard, to the order dated 23.05.2018, whereby the learned NCDRC had allowed the application under Section 12(1)(c) and permitted the complaint to proceed as a representative action. The said order was challenged by the petitioner before this Court in ***CM(M) 683/2018***, in which its operation was stayed on 16.07.2018. The respondents thereafter approached the Supreme Court in ***SLP(C) Diary No. 4883/2019***, whereby the Supreme Court *vide* order dated 15.02.2019 vacated the stay granted by this Court and directed that, if the persons then prosecuting the complaint desired to withdraw, an appropriate number of applicants could be substituted in their place and the matter would thereafter

proceed on merits. Mr. Kathpalia submits that the necessary effect of the said order was to permit the consumer complaint to continue in its representative character notwithstanding the subsequent withdrawal of the original complainants. The public-notice and representative process already directed by the learned NCDRC consequently stood revived, and substitution of other interested allottees was expressly contemplated by the Hon'ble Supreme Court.

44. Learned counsel points out that the petitioner thereafter withdrew ***CM(M) 683/2018*** on 13.08.2019, whereupon the proceedings before the Supreme Court were also disposed of as having become infructuous. He contends that, once the challenge to the order dated 23.05.2018 was withdrawn and the Supreme Court's order permitting substitution and continuation of the proceedings remained undisturbed, the representative character of the complaint could not subsequently be questioned through I.A. No. 4407/2022. The petitioner, according to him, cannot indirectly reopen an issue which it had elected not to pursue in the earlier proceedings.

45. Reliance is placed upon the principles of *res judicata*, constructive *res judicata* and issue estoppel. Learned Counsel submits that an issue finally determined at an earlier stage of the same proceedings cannot ordinarily be reopened at a later stage. In support thereof, he relies upon ***Satyadhyan Ghosal v. Deorajin Debi***[10], ***Daryao v. State of U.P.***[11], ***State of Uttar Pradesh v. Nawab Hussain***[12] and ***Forward Construction Co. v. Prabhat Mandal (Regd.), Andheri***[13]. The foundational requirement of sameness of interest, it is

[10] ***AIR 1960 SC 941***
[11] ***AIR 1961 SC 1457***
[12] ***(1977) 2 SCC 806***
[13] ***(1986) 1 SCC 100***

argued, was adjudicated when permission under Section 12(1)(c) was granted, and the petitioner cannot seek a second determination merely because the proceedings have since progressed and the circumstances of some members have changed.

46. Learned Counsel further relies upon ***Kunhayammed & Ors. v. State of Kerala & Anr.***[14]. He submits that the precise effect of the order dated 15.02.2019 must be understood in the light of its operative directions and the nature of jurisdiction exercised by the Supreme Court. According to him, if the said order is understood as an appellate or merits determination, the order of the learned NCDRC would stand merged in the order of the Supreme Court and could not retain an independent existence susceptible to indirect reconsideration under Article 227. In any event, even apart from the doctrine of merger, judicial discipline precludes any court or tribunal from adopting a position contrary to the express direction of the Supreme Court in the same litigation.

47. Mr. Kathpalia further submits that the subsequent impleadment of the present respondents was undertaken in pursuance of the liberty recognised by the Supreme Court and under orders passed by the learned NCDRC. The impleadment orders were not challenged by the petitioner at the relevant time. The petitioner participated in the proceedings, filed its additional written version and evidence and permitted the matter to progress substantially. It was only when the consumer complaint had reached the stage of final hearing that the petitioner again raised the issue of maintainability by filing I.A. No. 4407/2022 on 19.05.2022.

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[14] ***(2000) 6 SCC 359***

48. Learned Counsel submits that the petitioner's reliance upon ***Brigade Enterprises*** and ***Lucina Land Development Ltd.*** is misplaced. According to him, those decisions arose at the stage when permission under Section 12(1)(c) was being granted or examined and did not concern a case where permission had already been granted, public notice had been issued, the challenge had travelled to the Supreme Court, additional complainants had been impleaded and the representative proceedings had continued for several years.

49. It is submitted that ***Brigade Enterprises*** treats sameness of interest as a prerequisite to be examined at the stage of granting permission under Section 12(1)(c). It does not create a recurring right in favour of the service provider to reopen the permission order at every subsequent stage on account of individual developments relating to some members of the represented class. The present issue, therefore, is not whether permission initially should have been granted, but whether a threshold determination which has attained finality between the parties can be reopened when the complaint is ripe for final adjudication.

50. Mr. Kathpalia submits that permitting such reopening would have consequences extending beyond the present dispute. Every order granting permission under Section 12(1)(c) would remain provisional and susceptible to repeated challenges whenever some members take possession, transfer their units or settle their claims. This would deprive representative proceedings of procedural stability and enable a developer, after participating in the proceedings for several years, to seek dismantling of the representative action at the stage of final arguments. Such an approach, according to him, would frustrate the

object of Section 12(1)(c) and Order I Rule 8 of the CPC, which is to facilitate collective adjudication and avoid multiplicity of proceedings.

51. Learned counsel submits that the impugned order dated 12.10.2022 cannot be viewed in isolation from this procedural history. The learned NCDRC was conscious of the withdrawal of the original complainants, the substitution of the subsequently impleaded allottees, the earlier proceedings before this Court and the Supreme Court, and the reliefs which remained to be adjudicated. After considering the objections of the petitioner and the complainant-wise material placed before it, the learned NCDRC concluded that the surviving claims relating to delayed-possession compensation and increased saleable area disclosed sufficient commonality to permit the complaint to continue.

52. According to learned Counsel, the common foundational grievance remains the delay in delivery of possession by the same developer and the consequential claim for compensation. Differences concerning unit particulars, dates, amounts or subsequent events do not, by themselves, extinguish that common interest. Subsequent delivery of possession cannot retrospectively extinguish a claim which had already accrued for the preceding period of delay. Similarly, a transfer or settlement may affect the ultimate entitlement of the particular complainant concerned, but does not necessarily destroy the representative proceeding qua the remaining members. A person who has settled may be disentitled to any further recovery, without the settlement extinguishing the surviving claims of those who continue to prosecute the complaint.

53. Mr. Kathpalia also places reliance upon the order dated 23.03.2022 passed by the learned NCDRC. The said order records that

the Supreme Court, by its order dated 15.02.2019, had directed the learned NCDRC to conclude the proceedings as expeditiously as possible. It further records that, despite a last opportunity having been granted on 14.02.2022, the petitioner had not filed its evidence. The learned NCDRC accordingly imposed costs of ₹10,000/- upon the petitioner, granted it a further period of two weeks to file evidence and listed the consumer complaint for final hearing on 28.04.2022.

54. According to learned Counsel, the aforesaid order demonstrates that the consumer complaint had been delayed on account of the petitioner's repeated failure to complete its evidence and its successive challenges to the proceedings. He submits that I.A. No. 4407/2022 was filed only after the parties had completed their pleadings and evidence and the complaint was ripe for final hearing. The filing of the said application, followed by the present petition upon its dismissal, is therefore characterised as another attempt to postpone adjudication of the respondents' claims on merits.

55. Learned Counsel argues that the respondents have been awaiting adjudication of a complaint instituted as far back as 12.07.2017. The petitioner cannot be permitted, after participating in the representative proceedings for several years and withdrawing its earlier challenge, to turn the clock back and require the respondents to institute fresh proceedings under Section 12(1)(a) of the 1986 Act. Such a course would defeat the earlier orders of the Supreme Court and render the proceedings undertaken before the learned NCDRC over several years worthless.

56. Mr. Kathpalia submits that the petitioner's reliance on the subsequent settlements entered into by some of the complainants does not affect the maintainability of the complaint *qua* the remaining

respondents. A person who has settled may not be entitled to obtain any further relief, as was also recognised in the impugned order. However, the settlement of some members of the class cannot extinguish the common claims of those who continue to prosecute the proceedings. The reduction in the number of complainants from those originally impleaded to the persons presently remaining is, therefore, stated to have no bearing upon the representative character of the complaint.

57. It is lastly submitted that the petitioner is inviting this Court to undertake an appellate reconsideration of the procedural and factual conclusions reached by the learned NCDRC. The supervisory jurisdiction under Article 227, according to learned counsel, cannot be invoked to reopen an issue which has already travelled to the Hon'ble Supreme Court and in respect of which the petitioner had withdrawn its earlier challenge. In the absence of any jurisdictional error in the impugned order, Mr. Kathpalia accordingly prays that the present petition be dismissed and that the learned NCDRC be permitted to conclude Consumer Complaint No. 1962/2017 on merits without any further delay.

Analysis

58. Before entering into the rival contentions on merits, it is necessary to delineate the scope of interference under Article 227 of the Constitution. The jurisdiction conferred by Article 227 is supervisory and not appellate in character. Its object is to ensure that courts and tribunals subordinate to the High Court remain within the bounds of their authority and discharge their functions in the manner required by law. This Court would, therefore, not reappreciate the

material on record, substitute its own conclusions for those of the learned NCDRC, or interfere merely because another view may also be possible. The power is required to be exercised sparingly, principally where the authority below has acted without or in excess of jurisdiction, failed to exercise jurisdiction vested in it, disregarded a mandatory statutory prescription, or rendered a finding so perverse or manifestly unreasonable that its continuance would occasion grave injustice. Among the decisions of the Hon'ble Supreme Court delineating the scope of interference under Article 227 are ***Shalini Shyam Shetty v. Rajendra Shankar Patil***[15] and ***Garment Craft v. Prakash Chand Goel***[16].

59. Consequently, the enquiry in the present petition is not whether this Court would, on an independent appraisal, have arrived at the same conclusion as the learned NCDRC. The limited question is whether, while permitting the complaint to continue under Section 12(1)(c) of the 1986 Act, the learned NCDRC applied the jurisdictional requirements prescribed by the statute and the binding law governing representative consumer proceedings. If the impugned order proceeds upon an erroneous jurisdictional test, overlooks material statutory conditions, or exercises the jurisdiction vested in the learned NCDRC in a manner impermissible in law, such an error would fall within the supervisory ambit of Article 227.

60. With this brief preface, and having heard learned counsel for the parties and perused the record, this Court may now advert to the issues arising for consideration in the present petition.

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15 ***(2010) 8 SCC 329***
16 ***(2022) 4 SCC 181***

61. The first and the most important objection which falls for consideration is whether the maintainability of Consumer Complaint No. 1962/2017 as a representative complaint stood finally concluded by the orders passed in the earlier round of proceedings. The respondents contend that, once the Supreme Court *vide* its order dated 15.02.2019, vacated the stay granted by this Court against the order dated 23.05.2018, permitted substitution of appropriate applicants in the event of withdrawal by the original complainants and directed the matter to proceed on merits, it was no longer open to the petitioner to question the representative character of the complaint. This Court is unable to accept the objection.

62. Mr. Kathpalia's reliance upon the doctrine of merger also does not advance the case of the respondents. The Hon'ble Supreme Court's order dated 15.02.2019 was passed at the stage of consideration of the special leave petition and does not record either the grant of leave or the conversion of the proceedings into a civil appeal. As explained in ***Kunhayammed (Supra)***, the doctrine of merger is attracted when the appellate jurisdiction of the Supreme Court is invoked upon grant of leave and the appeal is thereafter decided. An order passed at the stage of special leave does not, by itself, result in the merger of the order under challenge. The express directions contained in the order dated 15.02.2019 are undoubtedly binding and have to be given full effect. However, their binding effect extends to what was actually directed and decided, i.e. vacation of the interim stay, issuance of public notice, substitution of an appropriate number of applicants upon withdrawal of the original complainants, and continuation of the complaint on merits. The said order did not adjudicate whether every person subsequently impleaded would

satisfy the requirement of sameness of interest, nor did it foreclose examination of the continued maintainability of the complaint upon a material alteration in the composition of the represented class.

63. The Hon'ble Supreme Court *vide* order dated 15.02.2019 employed the express language and the direction was that an *"appropriate number"* of applicants could be substituted and that the matter would thereafter proceed on merits. The use of the expression *"appropriate"* necessarily contemplated that the persons seeking substitution would have to be eligible to prosecute the representative complaint in accordance with law. Indeed, the learned NCDRC itself did not regard the Supreme Court's order as authorising unconditional impleadment. By the subsequent NCDRC order dated 30.05.2019, impleadment was permitted subject to four express conditions: *"(i) they are interested in all the reliefs sought in this complaint (ii) they have no other grievance against the OP (iii) their allotments have not been cancelled and (iv) they have already not approached either this Commission or any other Court/Forum for the redressal of their grievances."* Thus, even the learned NCDRC proceeded on the basis that the entitlement of the substituted complainants to remain in the representative proceedings required independent scrutiny.

64. The plea of finality is liable to be rejected on the grounds that, the I.A. No. 4407/2022 was not a disguised attempt to reopen the order dated 23.05.2018 on the same factual foundation. When permission under Section 12(1)(c) was originally granted, the complaint was being prosecuted by the three original complainants on the basis of the pleadings and reliefs framed by them. Thereafter, the original complainants settled their disputes and withdrew from the proceedings. This Court would like to emphasise that **numerous**

other allottees were subsequently impleaded, and their factual circumstances revealed materially distinct categories, including persons who had taken possession after varying periods of delay, subsequent purchasers, persons who had accepted compensation, persons who had executed conveyance deeds, persons who had transferred their units, and persons who had pursued or settled their claims before other forums. These circumstances arose, or became identifiable, only after the earlier round of proceedings.

65. The question raised in I.A. No. 4407/2022 was, therefore, not whether the three original complainants could have been permitted to institute the complaint in a representative capacity on the material available on 23.05.2018. The question was whether the complaint, after its complete reconstitution and in the form in which it was being prosecuted in the year 2022, continued to satisfy the jurisdictional conditions of Section 12(1)(c). A representative proceeding must continue to fulfil the conditions upon which its representative character depends. An initial order granting permission cannot immunise the proceedings from examination where subsequent developments have fundamentally altered the class which is prosecuting the complaint.

66. It is true that the doctrine of finality prevents a party from avoiding an earlier adverse adjudication merely by reformulating the same challenge under a different procedural provision. Equally, however, that principle applies where the matter was earlier directly and substantially in issue and was heard and finally decided. It does not bar consideration of a later application founded upon genuinely subsequent facts which materially alter the subject matter of the enquiry. The present application, in this Court's view, falls in the

latter category as it was neither based upon the same factual position nor directed against an issue previously adjudicated on merits.

67. This Court is conscious that an order granting permission under Section 12(1)(c) of the 1986 Act cannot be treated as perpetually provisional or reopened merely because some individual development occurs during the pendency of the complaint. Procedural stability is necessary in representative proceedings, and the mere settlement, transfer or change in the circumstances of an isolated member would not ordinarily justify reconsideration of the permission already granted. At the same time, the doctrine of finality cannot be invoked to perpetuate a proceeding which, owing to subsequent material developments, is alleged to have ceased to satisfy the statutory requirements governing its maintainability. The respondents' contention that the representative character of the complaint under Section 12(1)(c) had attained finality must, therefore, be considered in the context of the nature and extent of the subsequent changes. The present case does not involve a routine or isolated development. The three persons who instituted the complaint and framed its pleadings and reliefs ceased to prosecute it, whereafter a substantially different body of allottees was brought on record subject to express conditions. The objection raised in I.A. No. 4407/2022 was not directed against the correctness of the initial permission in the abstract, but concerned whether the complaint, after such reconstitution, continued to remain within the statutory limits of Section 12(1)(c). Examination of that question does not render every permission order provisional. It merely recognises that finality cannot operate as a shield against the examination of an alleged jurisdictional or statutory defect arising from material subsequent events, and that a representative proceeding

cannot continue in a form substantially different from the one for which permission was granted without the forum satisfying itself that its statutory foundation continues to subsist.

68. There was also an intervening judgment of the Hon'ble Supreme Court in ***Brigade Enterprises***. The decision clarified that sameness of cause of action is not equivalent to sameness of interest and that purchasers occupying different positions, such as those who accepted compensation, accepted it under protest or declined it, or suffered materially different periods of delay cannot automatically be treated as one homogeneous class. The judgment was delivered while Consumer Complaint No. 1962/2017 was still pending and before I.A. No. 4407/2022 was decided. It was, therefore, incumbent upon the learned NCDRC to apply the law so declared while examining whether the reconstituted complaint continued to meet the requirements of Section 12(1)(c).

69. Though ***Brigade Enterprises*** was rendered while examining the grant of permission under Section 12(1)(c), the decision explains the substantive content of the expression *"same interest"* occurring in the said provision. The relevance of that principle to the present case does not arise from any proposition in ***Brigade Enterprises*** permitting every order granting permission to be reopened at a subsequent stage. However in the present set of facts, it arises because I.A. No. 4407/2022 raised the distinct question that whether the complaint, after a material alteration in its composition, continued to satisfy the statutory requirements of Section 12(1)(c), an issue which had not been examined in the earlier proceedings before the learned NCDRC.

70. This Court emphasises once again that ***Brigade Enterprises***, where the legal basis governing a pure question of law and jurisdiction

is authoritatively clarified, the doctrine of *res judicata* cannot be invoked to compel a court or tribunal to decide a pending proceeding contrary to the law declared by the Supreme Court. This Court finds it pertinent to refer to certain paras from ***Canara Bank v. N.G. Subbaraya Setty***[17]:

> "**30.** An appeal from the Division Bench judgment pursuant to the Full Bench decision [*State of Punjab* v. *Nand Kishore*, 1974 SCC OnLine P&H 126 : AIR 1974 P&H 303] resulted in the decision in *Nand Kishore* v. *State of Punjab* [*Nand Kishore* v. *State of Punjab*, (1995) 6 SCC 614 : 1996 SCC (L&S) 57] . A brief resume of the facts shows that the appellant had been compulsorily retired, having completed only ten years' qualifying service in pursuance of Rule 5.32(*b*) of the Punjab Civil Services Rules, Vol. II. A writ petition that was moved by the appellant against the compulsory retirement order was dismissed on 2-2-1962. The appellant had not questioned the validity of Rule 5.32(*b*) in the aforesaid writ petition. However, in *Moti Ram Deka* v. *North East Frontier Railway* [*Moti Ram Deka* v. *North East Frontier Railway*, (1964) 5 SCR 683 : AIR 1964 SC 600] , this Court held that if the compulsory retirement rule permitted an authority to retire a public servant at a very early stage of his career, such rule might be constitutionally invalid. The appellant, spurred by the decision in *Moti Ram Deka* [*Moti Ram Deka* v. *North East Frontier Railway*, (1964) 5 SCR 683 : AIR 1964 SC 600] , filed a suit in 1964 for a declaration that Rule 5.32 of the aforesaid Rules was constitutionally invalid. A pari materia rule to that of Rule 5.32 was struck down by this Court in *Gurdev Singh Sidhu* v. *State ofPunjab* [*Gurdev Singh Sidhu* v. *State of Punjab*, (1964) 7 SCR 587 : AIR 1964 SC 1585 : (1964) 2 Cri LJ 481] . However, since a writ petition had been filed by the appellant earlier, the State of Punjab, in its written statement to the suit filed by the appellant, took up the plea of constructive res judicata. This plea found favour with the Full Bench of the High Court on 8-5-1974 [*State of Punjab* v. *Nand Kishore*, 1974 SCC OnLine P&H 126 : AIR 1974 P&H 303] , following which a Division Bench allowed the appeal of the State of Punjab on 13-8-1974. It is from this judgment that an appeal landed up before this Court, as is stated hereinabove. This Court, on 6-12-1990, advised the appellant to file a special leave petition from the order of the High Court dismissing his writ petition dated 15-2-1962 [*Nand Kishore Vaid* v. *State of Punjab*, 1962 SCC OnLine P&H 47 : PLR (1962) 64 P&H 469] , with an appropriate application for condonation of delay. The delay was

[17] ***(2018) 16 SCC 228***

condoned by this Court in the interest of justice in the special circumstances of this case under Article 142, and the said belated appeal was allowed following *Gurdev Singh* [*Gurdev Singh Sidhu* v. *State of Punjab*, (1964) 7 SCR 587 : AIR 1964 SC 1585 : (1964) 2 Cri LJ 481] and striking down the order of compulsory retirement of the appellant. Despite having so decided, this Court went into the doctrine of constructive res judicata and decided that the constitutionality of a provision of law stands on a different footing from other questions of law. ***As there is a presumption of constitutionality of all statutes, the "might and ought" rule of constructive res judicata cannot be applied. Instead what was applied by this Court was that part of the decision in Mathura Prasad [Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy, (1970) 1 SCC 613] which stated that when the law has, since the earlier decision in the appellant's writ petition, been altered by a competent authority, res judicata cannot apply. The Full Bench of the Punjab High Court was expressly overruled on the point that a "competent authority" can also be a court. Hence, a changed declaration of law would also fall within an earlier decision being altered by a competent authority. This Court, therefore, held that since this Court itself had altered the law when it declared the pari materia rule as unconstitutional, the doctrine of res judicata could not apply.***

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34.1. The general rule is that all issues that arise directly and substantially in a former suit or proceeding between the same parties are res judicata in a subsequent suit or proceeding between the same parties. These would include issues of fact, mixed questions of fact and law, and issues of law.

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34.3. ***Another exception to this general rule follows from the matter in issue being an issue of law different from that in the previous suit or proceeding. This can happen when the issue of law in the second suit or proceeding is based on different facts from the matter directly and substantially in issue in the first suit or proceeding. Equally, where the law is altered by a competent authority since the earlier decision, the matter in issue in the subsequent suit or proceeding is not the same as in the previous suit or proceeding, because the law to be interpreted is different***."

[Emphasis Supplied]

71. This Court would also like to refer to ***Hope Plantations Ltd. v. Taluk Land Board***[18], wherein the Hon'ble Supreme Court has held:

[18] ***(1999) 5 SCC 590***

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"**31.** Law on res judicata and estoppel is well understood in India and there are ample authoritative pronouncements by various courts on these subjects. As noted above, the plea of res judicata, though technical, is based on public policy in order to put an end to litigation. ***It is, however, different if an issue which had been decided in an earlier litigation again arises for determination between the same parties in a suit based on a fresh cause of action or where there is continuous cause of action. The parties then may not be bound by the determination made earlier if in the meanwhile, law has changed or has been interpreted differently by a higher forum***. But that situation does not exist here. Principles of constructive res judicata apply with full force. It is the subsequent stage of the same proceedings. If we refer to Order XLVII of the Code (Explanation to Rule 1) review is not permissible on the ground

> "that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment"."

[Emphasis Supplied]

72. Having rejected the objection raised upon finality, the next question concerns the continued maintainability of Consumer Complaint No. 1962/2017 under Section 12(1)(c) of the 1986 Act. This would require an examination of whether the complainants presently prosecuting the complaint possess the *"same interest"* contemplated by the said provision and whether they satisfy the conditions subject to which their impleadment was permitted by the learned NCDRC on 30.05.2019.

73. The requirement of sameness of interest constitutes the essential statutory foundation of a representative consumer complaint. As explained by the Supreme Court in ***Brigade Enterprises***, a complaint instituted by one or more consumers in a representative capacity is distinct from a joint complaint filed by a number of consumers for redressal of their own grievances. While several consumers may join together to pursue their individual claims, a representative complaint

is prosecuted on behalf of, and binds, numerous other consumers who are not necessarily parties to the proceedings. It is for this reason that the statutory requirement of sameness of interest assumes particular significance.

74. In the present case, however, determination of the aforesaid requirement is connected with an extensive factual enquiry. The complaint was originally instituted by three complainants who framed the pleadings and sought several reliefs, including delivery of possession, compensation for delayed possession and setting aside of the demand towards increased saleable area. Those three complainants subsequently settled their disputes and withdrew from the proceedings. Other allottees were thereafter impleaded subject to the conditions recorded in the order dated 30.05.2019. It has further been stated before this Court that, out of the 85 allottees who had at one stage been impleaded, only 49 presently remain, the others having settled their disputes with the petitioner.

75. Whether the presently surviving complainants constitute one homogeneous class cannot be determined merely by reference to the fact that they had purchased units in the same project or that some monetary relief may be claimed by each of them. The enquiry would necessarily require identification of each complainant presently prosecuting the complaint and an examination of, *inter alia*, the date and nature of the allotment, whether the complainant is an original or subsequent allottee, the date on which possession was offered and accepted, the period of delay, the compensation paid or accepted, the execution of any conveyance deed, the subsequent sale or transfer of the unit, the existence of any settlement and whether the complainant had already invoked the jurisdiction of another court or forum.

76. The said exercise would also require the factual position of each surviving complainant to be compared with the pleadings and reliefs framed by the three original complainants. It would have to be determined whether each of the surviving complainants remains interested in the reliefs sought in the complaint and whether the conditions imposed by the learned NCDRC on 30.05.2019 were fulfilled at the time of impleadment and continue to be fulfilled. The status of persons who have settled or ceased to pursue the proceedings would also have to be appropriately reflected while identifying the class, if any, which is presently before the learned NCDRC.

77. These are not matters which can be satisfactorily determined by this Court in the first instance while exercising supervisory jurisdiction under Article 227 of the Constitution. Any conclusive determination would require this Court to undertake a complainant-wise scrutiny of the pleadings, agreements, possession documents, conveyance deeds, settlement instruments, compensation records and proceedings instituted before other forums. Such an exercise would amount to assuming the role of the forum of first instance and entering into factual adjudication beyond the limited supervisory jurisdiction presently undertaken.

78. The learned NCDRC, before which the complaint, the amended memos of parties, the additional written version, the affidavits of evidence and the complainant-wise chart dated 13.08.2022 are on record, is the appropriate forum to undertake this enquiry. It is for the learned NCDRC to determine, on the basis of the presently subsisting party array and the material placed before it, whether the surviving complainants possess the sameness of interest required by Section

12(1)(c) and whether they satisfy the conditions stipulated in the order dated 30.05.2019.

79. The survival of an individual cause of action is conceptually distinct from the requirement of sameness of interest for maintaining a representative proceeding. The question is not merely whether each complainant may possess some surviving monetary claim, but whether the grievance, deficiency and relief are sufficiently common to enable all such claims to be adjudicated through the same representative pleadings and to bind the entire class by a common decision.

80. The impugned order dated 12.10.2022, however, does not undertake the aforesaid exercise. The learned NCDRC proceeded broadly on the premise that the surviving claims relating to delayed-possession compensation and the demand towards increased saleable area were sufficient to establish sameness of interest. The distinct categories identified by the petitioner and the effect of the conditions imposed on 30.05.2019 were not examined complainant-wise. Nor does the impugned order disclose any determination as to whether the surviving complainants, having regard to their respective factual and legal positions, could validly be treated as comprising one homogeneous class possessing the *"same interest"* within the meaning of Section 12(1)(c) of the 1986 Act. Such an enquiry required the learned NCDRC to examine whether the grievance alleged, the deficiency in service complained of and the reliefs claimed were substantially common to each of the surviving complainants, and whether their claims could be adjudicated on the basis of the same pleadings without undertaking materially distinct complainant-wise enquiries. The mere circumstance that all of them had purchased units in the same project, or that each may claim some

form of monetary compensation, could not by itself establish sameness of interest. It was necessary to determine whether their differing circumstances relating to possession, delay, transfer, acceptance of compensation, execution of conveyance deeds, settlement and prior litigation permitted them to be represented through a single complaint and bound by a common adjudication.

81. The learned NCDRC also observed that, in the case of persons who had transferred their units after seeking impleadment, their rights were required to be considered with reference to the date on which they had joined the proceedings and that a subsequent transfer would not, by itself, defeat their claims. There may be substance in the limited proposition that a transfer effected during the pendency of the proceedings does not automatically extinguish a claim which had already accrued prior thereto. That question, however, is distinct from whether such a person, after having transferred the unit, continues to possess the same interest as the other members of the represented class and remains entitled to prosecute the reliefs sought in the complaint for the purposes of Section 12(1)(c) of the 1986 Act. The nature of the rights transferred, the terms of the transfer, the period for which compensation is claimed and the entitlement, if any, retained by the transferor would require a complainant-wise examination. The impugned order does not undertake that exercise.

82. The omission of undertaking the adequate exercise in the impugned order as discussed above, assumes significance because ***Brigade Enterprises*** requires a clear distinction to be maintained between consumers jointly seeking redressal of their own grievances and consumers prosecuting a complaint on behalf of an entire class. The Hon'ble Supreme Court recognised that, where representative

proceedings are impermissible, the complaint may, depending upon the facts, be treated as a joint complaint confined to the actual complainants, and that other persons may be impleaded only where their grievance is limited to that projected in the complaint. The precise procedural course to be adopted must, however, depend upon the pleadings, reliefs and factual position of the persons who continue to prosecute the complaint. At this stage, it would be apposite to reproduce relevant paragraphs of ***Brigade Enterprises***:

> "**20.** The Explanation under Order 1 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.
>
> **21.***The Explanation under Order 1 Rule 8, is a necessary concomitant of the provisions of Rules 1 and 3 of Order 1. Order 1 Rule 1 CPC, allows many persons to join in one suit as plaintiffs. Order 1 Rule 3 allows many persons to be joined in one suit as defendants. But to fall under Order 1 Rule 1 or Order 1 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 1 are founded upon the sameness of the cause of action. This is why the Explanation under Order 1 Rule 8 distinguishes sameness of interest from the sameness of the cause of action.*
>
> **22.** ***Since "sameness of interest" is the prerequisite for an application under Order 1 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

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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.***

23. 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 respondent 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***.

24. 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 the 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.

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30. ***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***.

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34. Section 35(1) reads as under:

"**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—

(*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;

(*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

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

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

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38. 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 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 falling under Section 2(5)(*v*) attracting the application of Order 1 Rule 8 CPC read with Section 38(11).

xxx

40. 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 1 Rule 1 enabling more than one person to join in a suit as plaintiff is not expressly excluded.

xxx

41. Therefore, we are of the considered view 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 1 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. 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 [*Anil Kumar Virmani* v. *Brigade Enterprises Ltd.*, 2021 SCC OnLine NCDRC 417] , advertisements were issued and the intervenors have already filed impleadment application before the National Commission. They are entitled to be impleaded."

[Emphasis Supplied]

83. Mr. Misra has urged that, in view of ***Brigade Enterprises***, the respondents should pursue their claims through a joint complaint under Section 12(1)(a), rather than continue under Section 12(1)(c). This Court does not consider it appropriate to render a final opinion on that submission in the present proceedings. Whether the complaint may continue as a representative complaint, whether it may proceed as a joint complaint confined to the surviving complainants, or whether any identifiable group of complainants may be permitted to pursue a common grievance, are matters which must first be considered by the learned NCDRC after undertaking the requisite factual enquiry.

84. For the same reason, this Court refrains from deciding on whether the statement recorded on 27.07.2022, by which the complainants confined their claims to delayed-possession compensation and increased saleable area, amounted to an abandonment of part of the representative claim attracting Order I

Rule 8(4) of the CPC. The legal effect of that statement cannot be examined in isolation from the identity of the persons represented by the complaint, the reliefs in which they were interested and the representative character, if any, in which the proceedings may continue. The said issue is, therefore, also left open for determination by the learned NCDRC.

85. The conclusion reached by the learned NCDRC cannot, therefore, be sustained. This is not because this Court has itself determined that the surviving complainants lack sameness of interest, but because the necessary factual and statutory enquiry preceding such a conclusion was not undertaken. The failure to apply the jurisdictional requirements of Section 12(1)(c) to the presently surviving complainants and to examine compliance with the conditions imposed on 30.05.2019 renders the impugned order vulnerable to interference under Article 227.

86. Accordingly, the order dated 12.10.2022 passed by the learned NCDRC in I.A. No. 4407/2022 is liable to be set aside and the matter remitted to the learned NCDRC for consideration afresh. The learned NCDRC shall ascertain the current status and factual position of each surviving complainant and determine, in accordance with law:

i. whether the surviving complainants, or any legally identifiable group amongst them, possess the *"same interest"* required for continuation of a representative complaint under Section 12(1)(c);

ii. whether the conditions imposed by the order dated 30.05.2019 stand satisfied;

iii. whether, having regard to ***Brigade Enterprises (Supra)***, the proceedings may continue as a representative complaint, or as a joint complaint confined to the complainants actually before it, or in any other manner permissible under the 1986 Act;

iv. the effect of the settlements, transfers, conveyances, compensation accepted and proceedings pursued before other forums;

v. the effect of the statement recorded on 27.07.2022 in the context of Order I Rule 8(4) of the CPC; and

vi. any other ancillary or consequential issue which the learned NCDRC considers necessary for the effective and complete adjudication of the complaint.

87. It is clarified that this Court has expressed no final opinion on the merits of the aforesaid questions. All contentions of the parties in that regard are left open to be urged before and decided by the learned NCDRC on the basis of the updated array of parties, the material already on record and such further material as may be permitted to be placed before it.

88. This Court is mindful of the concern raised by respondents that, after the complaint has remained pending for several years, the surviving complainants should not be left to recommence the entire process or be deprived of adjudication merely because some members of the original class have settled or ceased to pursue the proceedings. At the same time, the claims of those who continue to prosecute the complaint must be examined within the statutory framework. In these circumstances, the appropriate course would be to request the learned NCDRC to undertake the aforesaid exercise and conclude the

proceedings as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this judgment.

89. In view of the aforesaid discussion, CM APPL. 29491/2026, filed by respondent no. 19 seeking a direction to the petitioner to hand over physical and vacant possession of Unit No. B1-38, Ground Floor, "The Valley", Panchkula, Haryana, is also disposed of. The relief sought therein is left open to be considered and decided by the learned NCDRC, in accordance with law, while adjudicating Consumer Complaint No. 1962/2017.

90. Accordingly, the present petition is allowed to the extent indicated hereinabove. The petition, along with all pending applications, stands disposed of.

91. The judgment be uploaded on the website forthwith.

92. The Registry is directed to send a copy of this judgment to the learned NCDRC.

AJAY DIGPAUL, J.

JULY 24, 2026/gs/*yr*