



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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BEFORE THE ADJUDICATING OFFICER

Complaint No. - 1493 of 2022

Date of Institution: - 21.06.2022

Date of Decision: - 10.11.2022

Ruby Gupta w/o Mr. Rakesh Kumar Singla r/o Flat no.702, Tower 2-A, Suncity Parikrama, Sector 20, Panchkula, Haryana- 134116.

...COMPLAINANT

VERSUS

1. Suncity Projects Pvt. Ltd., LGF-10, Vasant Square Mall, Plot-A, Sector-B, Pocket-V, Community Centre, Vasant Kunj, New Delhi, South West Delhi-110070.
2. Sushil Mehra, Authorised Representative of Suncity Projects Pvt. Ltd., Parikrama Group Housing, Opp. Junior Xavier's School, Sector-20, Panchkula-134116.
3. Laxmi Narain Goel s/o Nanad Kishore, r/o Essel House, Mandi Road, Sultanpur, Mehrauli, Delhi 110030.
4. Varun Aggarwal s/o Mr. Subhash Chand Aggarwal, r/o D-1702, LA-Lagune, Sector-54, Golf Course Road, Gurugram, Haryana-122001.

...RESPONDENTS

Hearing:- 6th

Present:- Ms. Ruby Gupta, complainant through video conferencing
Mr. Prateek Singhal Advocate, counsel for the complainant through video conferencing
Mr. Himanshu Gupta Advocate, counsel for the respondent through video conferencing

Santa Gupta

JUDGEMENT:

The brief facts culminating into the institution of the present complaint are:

1. Apartment buyer agreement between complainant Ruby Gupta, Neena Rani and Suncity Projects Pvt. Ltd., respondent no.1 was executed on 26.02.2011 for purchase of flat no.702, Tower 2-A, Suncity Parikrama, Sector 20, Panchkula, Haryana. During the family settlement request was made by Ms. Neena Rani joint allottee with Ruby Gupta to withdraw her name as allottee. With the consent of respondent no.1 the name of Neena Rani was deleted on 30.05.2019. Respondent no.1 had updated its record and the complainant, Ruby Gupta was shown as the sole owner of flat no.702, Tower 2-A, Suncity Parikrama, Sector-20, Panchkula. She has been living in the said flat for the last 5 years. Respondent no.2, Sh. Sushil Mehra is the Authorized Representative and Assistant General Manager (Marketing) of respondent no.1. Respondents no.3 and 4 are directors of respondent no.1. The complainant had paid all instalments within stipulated time as per clause 5 of the agreement. As per clause 25 of Apartment Buyer Agreement, respondent no.1 was required to complete the construction of the flat and handover physical possession of the same within 3 years from the date of execution of agreement i.e. 26.02.2014. On 16.02.2017 respondent no.1 had offered possession of flat and demanded payment of final instalment i.e. 5% plus IFMS charges and other allied charges from the complainant. Respondent no.1

had handed over possession of the said flat on 25.04.2017. When offer of possession was sent by the respondent to the complainant, the period of 3 years from the date of execution of agreement had already expired. The offer made by the respondent was without basic facilities/amenities. It was also contemplated by respondent no.2 that there was increase in rates of EDC by Chief Administrator, HUDA, which was challenged before Hon'ble High Court of Punjab and Haryana. The complainant was asked to furnish a fixed deposit of ₹2,88,427/- for a period of three years in lieu of enhanced rates of EDC. Since the complainant was in need of flat as she was living in rented house with her family, she had furnished fixed deposit in the sum of ₹2,88,427/- which was marked as lien in favour of respondent no.1. As per Annexure V & VI of Apartment Buyer Agreement, respondents are supposed to provide various amenities to the complainant. As per Annexure V common areas and amenities within the complex which were required to be provided are viz metalled roads, foot paths, parking ramp for entry and exit, sports complex, substation, machine room, transformer rooms and electrical control rooms, parking ventilation system, sewage treatment system, parks as per the landscaping design, entrance lobby, landscaped areas, service area/ DG room, security room/ area, generator room, pump room for firefighting and water supply system and fire control rooms. As per Annexure VI C.P. Fittings, chimney & hob, modular switches, geyser, fan, chinaware, jacuzzi, shower cubical in all bathrooms, designer light fittings, centralized communication system, modular kitchen, R.O. drinking

water, optical fibre cable, provision for Dish T.V., club, video door phone, power backup, convenience store, 24 hours three tier security, high speed lifts, children's playground, driver's lounge, provision for gas system, firefighting, earthquake resistant structure and school were to be provided. Out of Annexure V & VI of the agreement, Hobb, Jacuzzi, Optical Fibre Cable, Club, Driver's Lounge and provision for gas system are not provided and power backup is not of 8 KW. Out of Annexure V & VI, few items are provided but C.P. fittings are of poor quality, fans are not of Crompton Company, 24 hours three tier security is not efficient, high speed lifts are not adequate, firefighting extinguishers have already expired and the marble is broken. The complainant is fond of jacuzzi and she is having sever back pain, for which she has purchased said flat to get the benefit of jacuzzi which is not provided by the respondent. The complainant is having a daughter who is below 18 years of age, for whom she wanted to ensure security and the respondent had promised to provide 24 hours 3 tier security which is not provided by the respondents, due to which the complainant is always under mental pressure for the safety of her daughter. The respondents are letting out shops of the society to the restaurants to which general public is also having access, which again puts the complainant under mental pressure and security concern which results in medical complications. Medical reports of the complainant have been attached. The complainant is also facing structural issues as walls of the flat are improper. There is dampness and cracks in the walls of the flat and also cracks in the marble and tiles. Though the possession of the flat was handed over on 25.04.2017 but

registration of the flat was delayed by the respondent without any sufficient reason. On 19.01.2019, the respondent no.1 had issued no dues certificate in favour of the complainant. It was only on 11.06.2019 that the complainant could get conveyance deed of said flat executed. Vide emails dated 11.05.2017, 20.06.2017, 07.07.2017, 12.07.2017 and 06.08.2017, the complainant had approached the respondents. Till now no appropriate measures have been taken by the respondents for providing any of the amenities. The complainant also visited the office of the respondent no.1 at Panchkula but the respondents did not bother to listen to the issues of the complainant. The complainant had performed all her obligations within stipulated time but respondent no.1 is not performing its obligations. Legal notice dated 05.05.2022 was sent to the respondents by the complainant. The total sale consideration of the said flat is ₹81,30,951/-. As per order passed by Hon'ble Apex Court on 10.01.2022 in Civil Miscellaneous Application no.21 and 29 of 2022 in Miscellaneous Application no.665 of 2021 in Suo Motu Writ Petition (C) no.3 of 2020 with regard to cognizance for extension of limitation, the complaint is well within the period of limitation. The deficiency of services and amenities has arisen within the jurisdiction of this Court. By way of the present complaint, the complainant has sought payment of ₹35,00,000/- on account of cost of amenities which were never provided alongwith interest @ 24% per annum from the respective dates of deposit of consideration till realization of the amount, the complainant has sought interest @ 24% per annum on the amounts paid by the complainant to respondent for

purchase of flat from due date of possession i.e. 11.02.2014 till actual date of delivery of possession i.e. 25.04.2017, the complainant has also sought interest @ 24% per annum on the amount of interest from 25.04.2017 till date, to pay the amount of fixed deposit of ₹2,88,427/- with fixed interest which was furnished in favour of respondent no.1 for enhanced EDC at the time of offer of possession, to pay medical claim of ₹15,00,000/- for mental and medical harassment and ₹2,00,000/- as litigation expenses.

2. Upon notice respondent no.2 as authorized representative of all the respondents appeared through counsel and filed written statement on behalf of all the respondents taking preliminary objections that the present complaint has been filed with ill motives and with intention of gaining unjust enrichment by praying for an order of refund and compensation. The respondents are not liable to pay the illegitimate refund and compensation for facilities which are utilized by the complainant either exclusively or collectively with other allottees for more than last five years. The present complaint is based on erroneous interpretation of the provisions of the Act as well as incorrect understanding of terms and conditions of the buyers agreement dated 26.02.2011. The prayer sought by the complainant as to refund and payment of interest is not compensatory in nature. The Court of Adjudicating Officer has no jurisdiction to entertain the complaint under Section 31 of the Act.

3. On facts, it has been submitted that the complainant had approached the respondent company for allotment of residential apartment measuring 2150

sq. ft. in the housing project namely Suncity Parikrama, Sector 20, Panchkula.

The complainant after being fully satisfied with the facilities/amenities layout plans etc. was allotted apartment no. 702, 7th floor, block 2-A having super buildup area of 2150 sq. ft. @ ₹3,225/- per sq. ft. for a total sale consideration of ₹81,30,951/- along with car parking in the basement. Apartment buyer agreement was executed between the parties on 26.02.2011. On 16.02.2017 the respondent company, after obtaining occupation certificate, offered possession of said apartment to the complainant and handed over physical possession of the apartment to the complainant vide letter dated 25.04.2017. The complainant's satisfaction to the amenities and services was further acknowledged by the complainant vide acknowledgment letter dated 25.04.2017. Completion certificate was received by the respondent no. 1 company on 24.08.2018. Conveyance deed was executed on 11.06.2019. The complainant is enjoying the possession of said apartment without any interference since 2017 i.e. for more than five years. The contractual obligations were fulfilled and all the facilities and amenities were duly provided by the respondent no. 1 at the time of delivery of possession which was duly acknowledged by the complainant on various occasions in 2017 through acknowledgment letter dated 25.07.2017, in para no. 1, the complainant has stated that:

"I am fully satisfied with the physical and legal status of the captioned Apartment and also with the amenities and services provided to the captioned Apartment by the Company and hereby declare that the amenities and services are at parity with the Apartment Buyers Agreement dated 26-02-2011, and

further declare that all the assurances given by the Company have been duly fulfilled and the captioned Apartment is complete in all aspects, in accordance with the said Apartment Buyers Agreement."

In para no. 9 of the said acknowledgement letter, the complainant has stated that:

"I am left with no claim, demand or grievance of any nature against the Company for the said Apartment and all liabilities & obligations of the Company are hereby discharged/satisfied."

At page no. 4 of conveyance deed dated 11.06.2019, the complainant has stated that:

"AND WHEREAS the vendor has offered physical possession of the said apartment to the Vendee(s) and Vendee(s) after due inspection and physically examining the said apartment with respect to the specifications, quality, material, finishing, electrification works, sanitary fittings, water and sewage connections, including all promises and assurance made by the vendor to the Vendee(s), has recorded his/ her/ their full satisfaction and has/have agreed to take over the physical possession of the said apartment and executing this Sale Deed."

At para 24 of the Apartment Buyer Agreement dated 26.02.2011, it has been mentioned that:

"The offer of possession of the said "Apartment" shall be the conclusive evidence that the building/complex and the said "Apartment" have been fully completed in accordance with the plans and specifications as annexed to this agreement and the Allottee(s) agrees that upon taking the possession of the said "Apartment he/she shall have no claim against the owner in respect of any item of work in the said apartment which maybe alleged not to have been carried out or completed or in respect of any design, specifications, building materials used or for any other reason whatsoever,"

4. It has further been submitted that allegation by the complainant are an afterthought and the present complaint is belated and an offshoot of consumer complaint between the complainant and the respondent, the complainant with malafide intentions has abused the process of law. The complainant got the possession way back in the year 2017 and after sleeping over for five years her alleged rights woke up in the year 2022. There is no evidence in between 2017 and 2022 to show that the complainant had contacted the respondent or made any correspondence. The complaint is barred on the principles of delays and latches. In case, there is any structural defect or any other defect in the workmanship, quality or provision of services or any other obligations of the promoter as per agreement for sale and is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defect without further charges within 30 days and in the event of failure of promoter to rectify such defect, the aggrieved allottee shall be entitled to appropriate compensation. The complainant has not annexed any proof to substantiate her false allegations that certain facilities were not provided or were inadequate after 5 years of getting possession. Even if a bald plea has not been raised by the complainant to the effect that since August 2017, the respondent has not fulfilled its contractual obligations, compensation can only be given for damage or loss suffered, in the absence of loss suffered, there is no law to provide a windfall profit and the complaint is liable to be dismissed with exemplary cost. The present complaint is a leisure litigation initiated by the

complainant just to harass and blackmail the respondent and to extract money from it. The narrated facts clearly show that the complainant has been enjoying the possession for the last 5 years and suddenly started complaining about facilities already provided and acknowledged 5 years back. There is no actual grievance of the complainant and the present litigation is only to harass the respondent. Respondent cannot be held guilty of causing mental agony and hardship to the complainant which warrant compensation. The contentions raised by the complainant are fictitious, baseless, vague, wrong and created to misrepresent and mislead the Court. None of the reliefs prayed for by the complainant is sustainable. The present complainant is an utter abuse of process of law.

5. On merits, it has been submitted that the complainant is interpreting the loss of agreement half-hearted and not reading the provision as a whole. As per clause 25 of Apartment Buyer Agreement, the owner contemplates to complete the construction of said building/apartment within 3 years from the date of execution of agreement or approval of all services plan whichever is late, subject to timely payment by the allottees of sale price..... From the bare perusal of the provision of agreement there is no possibility of mistaking midnight for noon. As soon as all the plans get approval, the respondent is to deliver the possession of the property, which was delivered by the respondent to the complainant and rightfully possession was given to the complainant. The subject matter of the present case is beyond the jurisdiction of Adjudicating Officer. Even

if it is presumed that Adjudicating Officer has the power to decide the reliefs claimed by the complainant, the complainant is estopped to file the complainant by principle of election. Once the complainant has chosen to accept the compensation for delayed possession as per terms of agreement, she cannot be allowed to approbate and reprobate. The complainant had elected to accept compensation for delayed possession as per terms and conditions of agreement. A sum of ₹7,67,550/- was adjusted towards the recoverable amount from the complainant. Respondent had compensated the complainant way back on 14.03.2017, even before delivery of possession by the respondent. The complainant had elected to accept the benefit as per provisions of agreement without any protest and now the complainant has come up with a concocted story after 5 years taking undue advantage. Since the complainant has already accepted the amount of compensation, the law of estoppel applies and the complainant cannot be allowed to enrich herself by claiming compensation twice for the same subject matter. The contractual obligations were fulfilled and all the facilities and amenities were provided at the time of delivery of possession and the complainant is enjoying the possession of the said apartment without any interference since 2017 i.e. more than 5 years. As per contractual and statutory obligations, it is the duty of the complainant to pay for enhanced external development charges which are levied by the Government. The respondent has no say in this matter and this obligation, the complainant has to comply. This fact was acknowledged by the complainant vide acknowledgement letter dated 25.04.2017 and against point 15

of Apartment Buyer Agreement, the complainant has agreed to be under obligation to pay the Government of Haryana, local-body or any other competent Authority the applicable statutory charges including but not limited to any enhanced development charges. Proper security system has been installed for the welfare and safety of residences of society. After 5 years of wear and tear, the complainant is now trying to extort undue money from the respondent. As per para 67 contractual obligations which are acknowledged by complainant in acknowledgment letter, it was the responsibility of the complainant to purchase requisite stamp duty for registration of conveyance deed, it was only on 15.03.2019 that the stamp papers were purchased by the complainant, leading to inordinate delay in execution of conveyance deed. As per records no due certificate was issued to the complainant on 19.01.2019. The ratio of order passed by Hon'ble Supreme Court in Civil Miscellaneous Application no.21 and 29 of 2022 in Miscellaneous Application no.665 of 2021 in Suo Motu Writ Petition (C) no.3 of 2020 is not applicable to the facts of present case. The respondent has prayed for dismissing the complaint with exemplary costs for concealing the true facts of the case, intentionally misleading the Court and wasting precious time of the Court.

6. Arguments raised by both learned counsel for the parties have been carefully heard alongwith meticulous examination of the records of the case.

7. It is not disputed that the complainant had booked an apartment measuring 2150 sq. ft. in the project Suncity Parikrama, Sector 20, Panchkula of

the respondent no.1. Apartment Buyer Agreement was executed between the complainant Ms. Ruby Gupta, co-allottee Ms. Neena Rani and the respondent no.1 on 26.02.2011. Flat no.702, Tower 2-A was allotted to the complainant in the project of respondent no.1. Later on Ms. Neena Rani, who was joint allottee with the complainant Ms. Ruby Gupta, had withdrawn from the project and with the consent of respondent no.1, the name of Ms. Neena Rani was deleted on 30.05.2019 and Ms. Ruby Gupta became the sole owner of Flat no.702, Tower 2A, Suncity Parikrama, Sector 20, Panchkula. As per clause 25 of Apartment Buyer Agreement, construction of the tower was required to be completed and physical possession of the flat was required to be handed over by respondent no.1 to the complainant within 3 years from the date of execution of the agreement i.e. till 26.02.2014. It is apparent on the record that the construction was not completed in the year 2014 and possession of the flat was not handed over to the complainant by that time. It was only on 16.02.2017 that respondent no.1 had offered possession of the flat after obtaining occupation certificate. Copy of letter of offer of possession dated 16.02.2017 has been placed on record by learned counsel for the complainant as Annexure 7. At that time complainant had paid ₹66,50,500/- and there were arrears of ₹3,62,730/-. After calculating all the payments and demands, the respondent no.1 has awarded a sum of ₹7,67,550/- as compensation on delayed possession as per clause 25 of Apartment Buyer Agreement. It also bears signatures of the complainant. It has not been denied by the complainant that a sum of ₹7,67,550/- was paid by respondent no.1 as

compensation for delayed possession. By way of the present complaint, amount has been demand^{ed}_a by the complainant on the ground that as per Annexure V & VI of the Apartment Buyer Agreement, hobb, jacuzzi, optical fiber cable, club, drivers' lounge and provision for gas system were to be provided to the complainant but they were not provided. Power backup was provided but it was not of 8 KW. As per Annexure V & VI of Apartment Buyer Agreement, there were few articles which were provided but were of inferior quality viz C.P. fittings were of poor quality, fans were not of Crompton company, 24 hours 3 tier security was inefficient, high speed lifts were not adequate, firefighting extinguishers were expired and marble was broken. The complainant has also complained about some structural defects as walls of the flat are improper, there is dampness and cracks in the marble and tiles of the flat. The complainant has also raised security issue on the ground that the complainant was having a daughter under 18 years of age and the respondent has not provided 3 tier 24 hours security, due to which the complainant is always under mental pressure. The respondents are letting out shops of the society to the restaurants to which general public is also having access. This mental pressure results in medical complications. The complainant has also blamed the respondents for her medical complications which had arisen due to non-providing of jacuzzi. The complainant is having sever back pain and she had purchased the flat to get the benefit of jacuzzi which has not been provided by the respondents. Learned counsel for the complainant has placed on record copy of prescription slip dated 21.02.2018

issued by Dr. Suneet Kumar Verma, Sparsh Clinic, copies of outpatient cards dated 12.01.2019, 18.09.2021 and 23.11.2021 of Govt. Multi Speciality Hospital, Sector 16, Chandigarh, copies of prescription slips dated 29.11.2021, 09.12.2021 and 27.04.2022 issued by Dr. Anupam Goel, Max Hospital, Mohali.

8. Learned counsel for the complainant has argued and drawn attention of the Court towards mail dated May 28, 2017 sent by husband of the complainant to the respondents no.1 and 2 in which list of items has been mentioned which were present in the agreement in Annexure VI but not provided according to that or not up to mark, lists include convenience store, chimney and hob, modular switches, geyser, fan, chinaware, jacuzzi, centralized communication system, modular kitchen, club membership, video door phone, driver's lounge, provision for gas system and marble is broken. It has further been mentioned that exhaust fans were hanging in the air, doors were broken, almirah doors were not proper, kitchen sink was leaking, guarantee cards of Air Conditioners were not provided and balcony of kitchen was uneven and there was no reception area. Compensation of all these things was sought within 30 days of receiving the mail or he would file a suit against the respondents in Panchkula arbitration. Other mails are dated 20.06.2017 and 07.07.2017 to the same effect. Further mail was sent on 12.07.2017 informing the respondents that complete work was not done till date, last mail is dated 06.08.2017 in which it has been mentioned that no action has been taken till then and intercom facility was not installed.

9. Record shows that Annexure V of the Apartment Buyer Agreement dated 26.02.2011 provides for common area and amenities within complex and Annexure VI provides for project specifications and features. It is apparent that as per Apartment Buyer Agreement dated 26.02.2011, the possession of the flat was to be handed over to the complainant within 3 years i.e. upto 26.02.2014. It is also on the record that the possession was offered on 16.02.2017 by the respondent to the complainant. At this stage para 24 of Apartment Buyer Agreement dated 26.02.2011 is required to be looked into which specifically says that the offer of possession of apartment shall be conclusive evidence that the building and the apartment have been fully completed in accordance with the plans and specifications and the allottee agrees that upon taking the possession of the said apartment he/she shall have no claim against the owner in respect of any item of work which may be alleged not to have been carried out or completed or in respect of any design, specifications, building material used or for any other reason whatsoever. Copy of letter of offer of possession has been placed on the record as Annexure 7 by the complainant. It is also proved on the record that the respondent had handed over actual physical possession of Flat no.702, Tower 2-A to the complainant vide letter dated 25.04.2017. Copy of 'Acknowledgement by the Purchaser' dated 25.04.2017 has been placed on the record by learned counsel for the respondents. At the time of taking physical possession of the apartment, it has specifically been admitted by the complainant that she has duly taken over onsite vacant physical possession of the apartment through authorized

representative of the company with 3 sets of keys and has further confirmed that she was fully satisfied with physical and legal status of the apartment and also with the amenities and services provided to the captioned apartment by the company and has also declared that the amenities and services are at parity with the Apartment Buyers Agreement dated 26.02.2011 and has further declared that all the assurances given by the company have been duly fulfilled and the captioned apartment is complete in all aspects, in accordance with the said Apartment Buyers Agreement. In para no.9 of the said acknowledgement, it has been stated by the complainant/allottee that she is left with no claim, demand or grievance of any nature against the company for the said apartment and all the liabilities and obligations of the company are discharged/ satisfied. The said acknowledgement by the purchaser runs into 2 pages and both the pages have been duly signed by the complainant Ms. Ruby Gupta, co-allottee Ms. Neena Rani and Mr. Sushil Mehra respondent no.2 on behalf of respondent no.1, Suncity Projects Pvt. Ltd. In the column of witnesses, one is Sh. Rakesh Kumar, husband of the complainant and the other is Mr. Surinder Singla, resident of Ladwa, District Kurukshetra, may be some relative of the complainant. It is pertinent to mention here that the possession of the flat no.702, Tower 2-A was taken by the complainant on 25.04.2017 and on the same day the complainant had acknowledged the same. At the time of taking possession, the complainant has been acknowledging satisfaction with amenities and services provided to the apartment by the company and has also affirmed that amenities and services are

at parity with Apartment Buyer Agreement. It is not apparent on the record as to why she had acknowledged all the amenities and services provided to her flat as satisfactory when in fact they were not in consonance with the Apartment Buyer Agreement dated 26.02.2011. She was in possession of copy of Apartment Buyer Agreement since 26.02.2011 and it was not the case that she was not in a position to tally the amenities and services provided in the flat. There was no hurry to take actual physical possession of the flat, particularly when the possession was offered 2 months prior i.e. on 16.02.2017. A period of around 2 months was sufficient to look into the amenities and services provided by the company to the apartment owner. Though at the time of arguments, it has been argued by learned counsel for the complainant that since possession was to be taken from the respondent, which was already delayed, the complainant had signed all the papers. It is worthwhile to mention here that the complainant was not compelled to take possession immediately if amenities and services promised were not provided. At no place it has been mentioned in the 'Acknowledgement by Purchaser' that the possession of the apartment was taken while reserving her rights to demand the amenities and services promised. It is not the case that the complainant or her husband are illiterate and they were not aware of the repercussions of their admission that all the services and amenities which were promised in the Apartment Buyer Agreement dated 26.02.2011, were provided by respondent no.1 company, which were not actually provided. Clearly 'Doctrine of estoppel' applies. Learned counsel for the complainant has drawn

attention of the Court towards the copies of e-mails dated 28.05.2017, 20.06.2017, 07.07.2017, 12.07.2017 and 06.08.2017 sent by the complainant to respondent no.1 company with regard to either the amenities were not provided or which were provided they were inferior in quality. There is nothing on the record which shows that at any point of time the respondent had replied to the said mails sent by the complainant. It is also not apparent on the record as to after 28 July 2017 when the last mail was sent by the husband of the complainant to respondent no.1 or respondent no.2, what had happened. Neither there is any reply on behalf of respondent no.1 or respondent no.2 nor there is any further communication by the complainant as to whether the amenities or the services were provided to the complainant or not.

10. It is the argument of learned counsel for respondents that before handing over physical possession of the flat to the complainant all the facilities were provided, after enjoying all the amenities and services for 5 years, now the complainant says that these amenities and services were not provided. 5 years after taking physical possession of the apartment on 25.04.2017 and 3 years after execution of conveyance deed on 11.06.2019, the complainant kept on sleeping and has filed complaint on 21.06.2022 demanding amount for not complying with the promises made and for not supplying the requisite amenities and services and few articles were provided but were of inferior quality. In para 12 of the complaint, the complainant has stated that hobb, jacuzzi and optical fiber cables, provision for gas system have not been provided. With regard to these items, the

complainant could show the photographs that these articles have not been provided by the respondents despite promise. With regard to club and drivers' lounge, it has also been alleged that these are not provided. In para 13 of the complaint, it has been mentioned by the complainant that C.P. fittings were of poor quality, it has not been mentioned as to of which quality C.P. fittings were installed. With regard to fans, it has been written that they are not of Crompton company or equivalent company but it has not been mentioned as to fans are of which company. With regard to high speed lifts, it has been mentioned that they are not adequate, it was not specified in what way the high speed lifts were not adequate. With regard to firefighting, it has been written that fire extinguishers are expired. It was bounden duty of the complainant to take photographs of the expired fire extinguishers and place on record to prove her averment. It is also the allegation of the complainant that the exhaust fans were hanging in the air, doors were broken, almirah doors were not proper, kitchen sink was leaking and guarantee cards of Air Conditioners were not provided and balcony of kitchen was uneven. No attempt has been made by the complainant to take the photographs of hanging exhaust fans or the broken doors or almirah or leaking kitchen sink or uneven balcony of kitchen. It has been alleged by the complainant that marble is broken and there are cracks in the walls and tiles. Firstly, it was required to be specified as to which walls have cracks and which marble is broken: Only oral averment is not sufficient. The complainant was required to place on record the photographs showing the cracks in the walls and

also showing broken marble. Any averment taken by the complainant has to be proved by sufficient and cogent evidence. If compensation has been sought on the ground that few articles were not provided and few articles which were provided were of inferior quality, the complainant was required to specify each and every article to substantiate her allegations.

11. At the time of arguments, it has been argued by learned counsel for the complainant that execution of conveyance deed had unnecessarily been delayed by the respondents no.1 and 2. At this stage, it is necessary to again have a look on 'Acknowledgment by the Purchaser' dated 25.04.2017. In para no.7 of the said acknowledgment, it has specifically been written that the allottee was solely responsible to pay all the charges for registration of title documents. The allottee shall further be responsible for all the charges..... and of loss sustained by the company as a consequence of delay in execution of sale/conveyance deed. When whole of the payment has been taken by the respondent no.1 and actual physical possession has been handed over to the allottee, substantial nothing remains to be done on the part of respondent company for execution of conveyance deed. It is the allottee, who has to purchase the stamp papers and also to pay registration charges. Copy of conveyance deed has been placed on the record by learned counsel for respondents as Annexure R-3. It shows that stamp duty in the sum of ₹3,76,000/- was purchased by the complainant on 15.03.2019. When stamp papers were to be purchased by the complainant herself, it does not lie in the mouth of complainant to say that

execution of conveyance deed was got delayed by the respondent no.1 or 2. The matter would had been entirely different if the stamp duty was purchased in the year 2017 after taking physical possession, but the conveyance deed was got executed in the year 2019 and the delay was caused at the instance of respondent no.1 or 2. The conveyance deed has been executed on 11.06.2019. It cannot be said that execution of conveyance deed was delayed by the respondent no.1 or 2 and the complainant is entitled to compensation from the respondents for getting delayed the execution of conveyance deed.

12. The complainant has also sought compensation for mental agony and pressure for security of her daughter who is under 18 years of age because of non-providing of 3 tier 24 hours security by the respondents. It is pertinent to mention here that it has not been specifically mentioned by the complainant as to at which place security was promised to be provided, which has not been provided. If the complainant wants compensation on the ground of non-providing of security, she has to specify where it has lacking and what was threat to security of her daughter.

13. The complainant has also sought compensation from the respondent for her medical treatment as she was having sever back pain and despite promise, the respondent no.1 has not provided jacuzzi. She has placed on record copy of prescription slip dated 21.02.2018 from Dr. Suneet Kumar Verma, Sparsh Clinic. In the column of diagnosis HTN which is short form of hypertension, has been written and duration has been mentioned as 3 years. There was also complaint of

lower back ache and knee pain. She was also having uncontrolled Blood Pressure. This prescription slip is of the year February 2018 and complaint of hypertension has been mentioned for the last 3 years. The complainant had taken possession of her apartment in April 2017. The complainant has also placed on record copies of outpatient cards dated 12.01.2019, 18.09.2021, 07.10.2021 and 23.11.2021 of Govt. Multi Speciality Hospital, Sector 16, Chandigarh. In all these prescription slips, she has been advised physiotherapy of back and knee. The complainant has placed on record copies of prescription slips from Dr. Anupam Goel, Max Hospital, Mohali which are dated 29.11.2021, 09.12.2021 and 27.04.2022. In the first prescription slip, the complainant was having complaint of sweating off and on, insomnia and dyspepsia. She has been advised X-ray of chest. Though, the complainant has placed on record prescription slips showing that she had been suffering from high blood pressure and back pain and knee pain, yet neither it is proved on the record that these problems had arisen because of not providing jacuzzi in the apartment of the complainant nor it is proved on the record in the absence of jacuzzi the physical ailments of the complainant have increased. This plea has been taken by the complainant in her complaint but the complainant has failed to substantiate that because of non-providing of jacuzzi in the apartment, the ailments of the complainant had increased. Instead of waiting for 5 years in wait of the respondent no.1 getting installed jacuzzi in the apartment of the complainant and increasing her ailments, she could personally arrange and then could have claimed from respondent no.1 if at all it was not provided. Though a

sum of ₹15,00,000/- has been claimed on medical grounds, yet not even a single medical bill has been placed on record. In the present case, it has not been proved that the medical problems of the complainant were because of non-supply of jacuzzi or other articles by the respondent no.1. There is no law of the land that even if compensation is to be awarded, it is awarded on the basis of prescription slips only without annexing any bills or receipts. No claim is made out to award any compensation against medical complications under relief no.6.

14. The complainant has also alleged that respondents are letting out shops of the society to the restaurants which are having access by general public also, which puts the complainant under mental pressure of security concern which results in medical complications. It is pertinent to mention here that the complainant was having high Blood Pressure since the year 2015. At that time she was living in a rented house, there was no security concern with the respondents either with regard to inefficient 24 hours 3 tier security or letting out shops of the society to the restaurants which are access by general pubic also. The complainant has levelled general allegations of all types without bothering to substantiate the same.

15. It has been argued by learned counsel for respondent that the possession was taken by the complainant on 25.04.2017 and the present complaint has been filed on 21.06.2022, after 5 years of taking actual physical possession. The complaint is barred by delay and latches and is liable to be dismissed on this ground also.

16. On the other hand, it has been argued by learned counsel for the complainant that vide order dated 10.01.2022 Hon'ble Apex Court in Miscellaneous Application no.21 and 29 of 2022 in Miscellaneous Application no.665 of 2021 in Suo Motu Writ Petition (C) no.3 of 2020, certain rules have been laid for extension of limitation, it has been clarified that in cases where the limitation would expire during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance of limitation remaining, all persons shall have limitation period of 90 days from 01.03.2022, in the event the actual balance period of limitation remaining w.e.f. 01.03.2022 is greater than 90 days, longer period shall apply. It has further been argued by learned counsel for the complainant that in this manner, the complaint is within limitation.

17. Perusal of record shows that the complainant had taken possession of the flat on 25.04.2017. In case of structural defects, as pointed out by learned counsel for the complainant that the walls were improper, there were cracks in the walls, marble and tiles and the doors were not properly placed, the issue of structural defects could be raised within 5 years of taking actual physical possession. The period of 5 years would expire on 24.04.2022. As per observations of Hon'ble Apex Court in Miscellaneous Application no.21 and 29 of 2022 in Miscellaneous Application no.665 of 2021 in Suo Motu Writ Petition (C) no.3 of 2020 (supra), if the limitation expires between 15.03.2020 till 28.02.2022, all the persons would have limitation period of 90 days from 01.03.2022, which still expires in the present case on 01.06.2022. The present

complaint has been filed on 21.06.2022. With regard to raising issues for structural defects, period of 5 years has already expired. So far as the limitation for claiming remaining reliefs is concerned, RERA Act, 2016 it does not prescribe any limitation. It has already discussed in details that at the time of taking actual physical possession, Acknowledgment by Purchaser was signed by the complainant herself affirming that all the services and facilities were provided by the respondent no.1.

18. It has also been pointed out by learned counsel for the respondent that the complainant is a habitual litigant and has also filed a complaint against the respondent before National Consumer Disputes Redressal Commission Haryana. Though copy of complaint has not been attached by learned counsel for the respondents, yet it has not been denied by the complainant having filed complaint before National Consumer Disputes Redressal Commission, Haryana.

19. By way of the present complaint, the complainant has sought against relief no.1 that action to be initiated against the respondents under the Act. It is worthwhile to mention here that this is very vague prayer and it was required to be specified as to for which violation under which section, action has to be taken against the respondents. Under each and every section and for each violation, there is separate action required. In the absence of any such specific averment, no relief can be granted under relief clause no.1.

20. Under relief no.2, the complainant has sought payment of ₹35,00,000/- on account of cost of amenities which were never provided along

with interest @ 24% per annum from the respective dates of deposits of consideration till realization of the amount. It is pertinent to mention here that in the foregoing paragraphs, it has already been discussed in detail about the amenities which were allegedly promised and not provided by the respondents. Firstly how the complainant has assessed ₹35,00,000/- of the costs of amenities which were not provided i.e. Hobb, Jacuzzi, Optical Fibre Cable, Club, Driver's Lounge and provision for gas system are not provided and power backup is not of 8 KW. Moreover, it has been discussed in detail that at the time of executing Acknowledgement by Purchaser, which was executed at the time of taking actual physical possession of the flat on 25.04.2017, the complainant has herself affirmed that all the amenities and services which were promised in Apartment Buyer Agreement dated 26.02.2011 were provided and she was satisfied with the same. She has further stated that nothing was due from the respondent. The complainant can't blow hot and cold in the same breath. On one hand on 25.04.2017, she has stated that all the amenities and services which were promised by the respondent in the Apartment Buyer Agreement were provided and after five years i.e. in June 2022 she has come up with a complaint seeking compensation of ₹35,00,000/- on account of costs of amenities which were never provided. When the complainant is not being granted this relief, obviously interest @ 24% per annum from the respective dates of deposit of amount till realization of the amount, as demanded by the complainant is not being granted. Resultantly no amount is being paid under relief no.2.

21. Under relief no.3, the complainant has demanded interest @ 24% per annum on the amount paid by her to respondent for purchase of flat from the due date of possession i.e. 11.02.2014 to the actual date of delivery of possession i.e. 25.04.2017. It is worthwhile to mention here that respondent no.1 has already paid ₹7,67,550/- as compensation on delayed possession which is evident from copy of offer of possession dated 16.02.2017 placed on record as Annexure 7 by learned counsel for complainant. It has been admitted by the complainant. When the complainant has accepted compensation on delayed possession from respondent no.1 way back in February 2017, now the complainant cannot claim interest on delayed possession. So far as the interest on delayed possession is concerned, it has to be separately moved before Hon'ble Authority. Hence no amount is being paid under relief no.3.
22. Under relief no.4, the complainant has sought interest @ 24% per annum on the amount of interest which is due as per relief no.3 w.e.f. 25.04.2017 till date. It is not mentioned under which provision, interest on interest is being demanded. It is being clarified that if no amount of interest @24% per annum is granted on delayed possession by this Court, obviously interest @ 24% per annum on the amount of interest is also declined.
23. Under relief no.5, the complainant has sought payment of amount of ₹2,88,427/- for which amount fixed deposit was created and it was furnished in favour of respondent no.1 for enhanced EDC at the time of offer of possession. At this stage, it is mentioned that the fixed deposit in the amount of ₹2,88,427/-

was not in the name of respondent no.1, rather it was in the name of the complainant herself but lien was created in favour of respondent no.1. The complainant can seek relief of discharge the lien not the amount of fixed deposit. For this relief also, the complainant has to move before Hon'ble Authority.

24. Against the relief no.7, the complainant has sought ₹2,00,000/- as litigation expenses. When no compensation is being granted against any of the heads claimed by the complainant, no amount of litigation expenses is being granted to the complainant.

25. Sequel to aforesaid discussions and observations, finding no merit in the complaint of the complainant, it is ordered to be **Dismissed**. Both the parties are left to bear their own costs. After uploading of order on the website of Authority, file be consigned.

10.11.2022


Sarita Gupta
(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 29 pages and all the pages have been checked and signed by me.

Sarita Gupta
(DR. SARITA GUPTA)
ADJUDICATING OFFICER