

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1512 OF 2017

1. ANIL RAWAT & ANR.

S/o Sh. Manohar Singh Rawat, R/o C6-501, The Legend, Sector-57

Gurgaon

Haryana-122002

2. MADHU RAWAT

W/o Sh Anil Rawat, R/o C6-501, The Legend, Sector-57

Gurgaon

Haryana-122002

.....Complainant(s)

Versus

1. CLARION PROPERTIES LIMITED & 2 ORS.

Through its Directors, Regd. Office at: 34, Babar Lane, Bengali Market,

New Delhi-110001

2. AJANTA BUILDERS PVT. LTD.

Through its Directors, Regd. Office at: 20, Ansari Road, Daryaganj,

New delhi-110006

3. AEZ INFRATECH PRIVATE LIMITED

Through its Directors, having its office at: 707, 7th Floor, Chiranjiv Tower, 43, Nehru

Place

New Delhi

.....Opp.Party(s)

CONSUMER CASE NO. 1513 OF 2017

1. GOPAL GUPTA & ANR.

S/o L.M. Gupta, aged about 46 years, R/o C2-302, The Legend, Sector 57

Gurgaon

Haryana-122002

2. LLA GUPTA

W/o Gopal Gupta, aged about 43 years, R/o C3-303, The Legend, Sector 57,

Gurgaon

Haryana-122002

.....Complainant(s)

Versus

1. CLARION PROPERTIES LIMITED & 2 ORS.

Through its Directors, Regd. Office at: 34, Babar Lane, Bengali Market,

New Delhi-110001

2. AJANTA BUILDERS PVT. LTD.

Through its Directors, Regd. Office at: 20, Ansari Road, Daryaganj

New Delhi-110006

3. AEZ INFRATECH PRIVATE LIMITED

Through its Directors, having its office at: 707, 7th Floor, Chiranjiv Tower, 43, Nehru

Place

New Delhi

.....Opp.Party(s)

CONSUMER CASE NO. 1539 OF 2017

1. MAHESH KUMAR SHARMA & ANR.

S/O MALIRAM SHAMA, R/O C6-103, THE LEGEND SECTOR 57,

GURGAON - 122002

2. RUCHI SHARMA,

W/O MAHESH KUMAR SHARMA, R/O C6-103, THE LEGED SECTOR 57,

GURGAON - 122002

.....Complainant(s)

Versus

1. CLARION PROPERTIES LTD. & 2 ORS.

THROUGH ITS DIRECTORS. REGD. OFFICE AT 34, BABAR LANE, BENGALI
MARKET

NEW DELHI - 110001

2. AJANTA BUILDERS PVT. LTD,

THOUTGH ITS DIRECTOR REGD. OFFICE AT 20, ANSARI ROAD, DARYAGANJ,

NEW DELHI - 110006

3. AEZ Infratech Private Limited.,

707, 7th Floor, Chiranjiv Tower, 43, Nehru Place,

New Delhi

.....Opp.Party(s)

CONSUMER CASE NO. 1540 OF 2017

1. MINI WAHI

W/o. Lt. Col. YK Wahi (Retd), R/o. C6-201, The Legend, Sector - 57

Gurgaon

Haryana

2. -

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-

3. -

-

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.....Complainant(s)

Versus

1. CLARION PROPERTIES LTD. & 2 ORS.

Through Its Directions, Office at: 34, Babar Lane, Bengali Market,

New Delhi - 110001

2. Ajanta Builders Pvt. Ltd.

Through its Directors, Regd. Office at: 20, Ansari Road, Daryaganj,

New Delhi - 110006

3. AEZ Infratech Private Limited

Through its Directors, Having its Office at: 707, 7th Floor, Chiranjiv Tower, 43, Nehru Place,

New Delhi

.....Opp.Party(s)

CONSUMER CASE NO. 1541 OF 2017

1. RITI KALRA

D/o. Dalbir Singh Bhatia, R/o. C3-303, The Legend, Sector - 57,

Gurgaon - 122002

Haryana

.....Complainant(s)

Versus

1. CLARION PROPERTIES LTD. & 2 ORS.

Regd. office at 34, Babar Lane, Bengali Market,

New Delhi - 110001

2. Ajanta Builders Pvt. Ltd.

Through its Director, Regd. office at 20, Ansari Road, Daryaganj,

New DELhi - 110001

3. AEZ Infratech Private Limited.,

Through Its Director, Having Its Office at 707, 7th Floor, Chiranjiv Tower 43, Nehru Place,

New Delhi

.....Opp.Party(s)

CONSUMER CASE NO. 1706 OF 2017

1. PROMIL SACHDEV & ANR.

W/o Wg. Commander Yogesh Sachdev(Retd.), R/o C1-301, The Legend, Sector 57,

Gurgaon-122002

Haryana

2. WG. COMMANDER YOGESH SACHDEV(RETD)

Through their AR, Sh. Aman Aditya Sachdev, R/o H. No. 346, DDA, Hauz Khas,

New Delhi-110016

.....Complainant(s)

Versus

1. CLARION PROPERTIES LIMITED & 2 ORS.

Through its Directors, Regd. Office At: 34, Babar Lane, Bengali Market,
New Delhi-110001

2. AJANTA BUILDERS PVT. LTD,

Through its Directors, Regd. Office at: 20, Ansari Road, Daryaganj,
New Delhi-110006

3. AEZ INFRATECH PRIVATE LIMITED

Through its Directors, Having its office at: 707, 7th Floor, Chiranjiv Tower, 43, Nehru
Place,
New Delhi

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA,PRESIDING MEMBER
HON'BLE DR. INDER JIT SINGH,MEMBER**

For the Complainant : Mr. Bhupender Pratap Singh, Advocate
with Ms. Ranjita Pal, Advocate

For the Opp.Party : Ms. Kaadambari, Advocate with
Ms. Ayushi and Mr. Sahil, Advocates

Dated : 06 Mar 2023

ORDER

DR.INDER JIT SINGH, MEMBER

1. The present batch of Consumer Complaints (CCs) have been filed by the Complainant(s) against Opposite Parties as detailed above, inter alia praying for directions to the OP(s) for:-

- i. Delay Compensation.
- ii. Refund of club membership charges.
- iii. Refund of Contingency fund deposit.
- iv. Refund of excessive electricity Connection charges.
- v. Refund of Interest Free Maintenance Security (IFMS).
- (vi) Refund of Administration Charges.
- (vii) Refund of illegally charged amount on account of excessive area Charges.
- (viii) Refund of illegally charged amount on account of BOCW Welfare Cess.
- (ix) Refund of illegally charged amount on account of failure to provide Italian marble floors in drawing and dinning room promised in the agreement/brochure and shown in the sample flat.
- (x) Refund of illegally charged amount on account of failure to provide hardwood doors promised in the agreement/brochure and shown in the sample flat.
- (xi) Refund of illegally charged amount on account of failure to provide Kohler fittings in the bathrooms as promised in the agreement/brochure and shown in the sample flat.

(xii) Compensation for delay in providing basement parking.

(xiii) Compensation for non-existent and deficient
common area facilities.

xiv) Compensation for exposing complainants to extreme risk and hazard
on account of poor mechanical, electrical and plumbing work.

(xv) Compensation for physical and mental harassment/agonny.

(xvi) Pay cost of litigation.

(xvii) Grant pendent lite and future interest @18% p.a. on the prayed
amounts under different heads stated above.

(xviii) Return the satisfaction note, no objection note, handing over/ taking
over note and other blank papers which were forcibly got signed by it from the complainants before the registration of the apartments.

2. Since the facts and question of law involved and the reliefs prayed for in these complaints are similar/identical and against the same Opposite Parties except for minor variations in the dates, events and flat numbers etc., which are summarized in the Table at Annexure –A, these complaints are being disposed off by this common order. However, for the sake of convenience, Consumer Complaint (CC) No. 1512 of 2017 is treated as the lead case and facts enumerated herein under are taken from CC 1512/2017.

3. Notice was issued to the OP(s). Parties filed Written Statement/Reply, Rejoinder, Evidence by way of an Affidavit and Written Arguments/Synopsis etc. as per details given in the Table at Annexure-A. The details of the flats allotted to the Complainant (s)/other relevant details, based on pleadings of the parties and other records of the case are also given in the Table at Annexure-A.

4. Brief facts of the case, as emerged from the pleadings of the parties and other case records are that:-

i) A flat No. C6-501 in the project of OP-1, 'The Legend', in Sector 57, Gurgaon was originally allotted to one Mr. Q.R. Gupta (HUF) on 18.11.2006 and subsequently a Buyer's Agreement was executed between Q.R. Gupta HUF and OP-1 on 18.11.2006. Thereafter, the Complainants purchased the said unit from the original allottee and stepped into the shoes of original allottee by means of an endorsement by OP-1 on the said Buyer's Agreement dated 18.11.2006. Vide letter dated 11.09.2008, OP-1 transferred all rights, direct or indirect, pertaining to the said flat, in the name of complainants, alongwith complete deposited amount of Rs.48,04,344/- against the said flat.

ii) As per said Agreement dated 18.11.2006, the committed date of completion of the said unit is 36 months from the date of start of construction of the tower in which the said unit is located or from the execution of the agreement, whichever is later, subject to force majeure circumstances and on receipt of all payments punctually as per agreed terms.

iii) The construction of the tower where the said flat was located was completed on 14.10.2009 and OP-1 applied for Occupation Certificate (OC) on 14.10.2009. OP-1 obtained OC on 12.10.2010 and thereafter issued final call letters dated 23.10.2010 to complainants asking them to take over the possession of the unit. A conveyance/sale deed was executed on 10.02.2011, by which the possession of the said unit was handed over to the complainants.

iv) As per said agreement dated 18.11.2006, the unit was booked under construction linked plan with total consideration of Rs.55,41,184/-, with total basic price of Rs.53,38,164/- and in addition maintenance security Rs.1,48,200/- (@ Rs.50/- per sq.ft.), contingency deposit Rs.14,800/- (@Rs.5/- per sq.ft.), club for community facility Rs.40,000/-. Further, electric connection charges were 'to be billed', Registration/Stamp Duty charges 'as may be applicable' and service tax or any other taxes 'as may be applicable'. The total super area as per said agreement is 2964 sq.ft., rate per sq. ft. is Rs.1801/- (total BSP Rs.53,38,164/-), the price of unit is payable on the basis of super area i.e. covered area inclusive of common areas as determined by the OP-1.

5. It is contended by the Complainants that:-

i) The total consideration for the unit, including IFMS Security, Club Membership and contingency final charges was Rs.55,41,184/-, but complainants were forced by OP-1, under threat of cancellation of allotment, to pay a total consideration of Rs.72,25,417/-, including stamp duty and registration, by levying unconscionable, unsubstantiated and illegal charges in the name of electricity connection charges, excess area charges, BOCW Cess, IFMS maintainance security, besides delaying handing over of the apartment by more than a year. The OP-1 did not provide the facilities and features that it promised in its brochure, website and demonstrated in the sample flat, thereby grossly overcharging the complainants for non-existent features.

ii) The complainants were before this Commission from 26.09.2012 to 25.01.2017 by way of a joint complaint bearing No. 260/2012 titled 'Deepankar Choudhary and 19 others versus Clarion Properties Ltd. and Anr.' and vide order dated 25.01.2017, were given liberty to file a fresh complaint on the same cause of action. Hence, this complaint.

6. OP-1 in their reply while raising certain preliminary objections, like pecuniary jurisdiction, non-joinder of parties, the allegations involving complicated questions of law and fact requiring a civil trial etc., denied most of the allegations in the complaint.

7. The OP-2 in their reply stated/contended that: -

OP-2 has ceased to be the maintenance agency and same has been overtaken by M/s Nimbus Harbour Management Facilities Pvt. Ltd. w.e.f. 01.07.2013. OP-2 was doing the maintenance work on behalf of Legend Condominium Association (LCA); OP-2 decided to pull out of agreement as residents were not regularly paying the monthly maintenance and electricity charges to them as a result of which there is a default of lakhs of rupees on that count. The issue raised by complainants do not relate to OP-2.

8. In the Rejoinder to reply filed by OP1/OP2 the complainants stated that:-

(i) Getting the sale deeds registered was a pre-requisite for securing the title of the complainants in their apartment. Registration of sale deed does not disentitle the complainants from claiming compensation for the deficiency in service and unfair trade practice that the OPs subjected them to. Regarding OP-1's contentions on pecuniary jurisdiction, the complainants stated that quantum of claim in the earlier complaint (CC/260/2012) has no bearing on the quantum of claim in the present complaint. The grounds raised for referring the case to a Civil Court are not valid. LCA is a party to maintenance agreement dated 09.05.2011, but that alone is not a ground to implead it as party, especially when no relief is claimed against it. Complainants admit that in June 2013, OP-2 was replaced by M/s Nimbus Harbor Facilities Management Services by LCA.

(ii) OP-1 has used the brochure to mislead the complainants by painting a rosy picture of facilities and features in the residential complex and now taking the defence that brochure is not part of the agreement. This itself is an unfair trade practice within the meaning of the Act. The RERA Act 2016 makes the developers liable for damages for false advertisements. While OP has admitted to building a sample flat, it has not disclosed as to when it was built and when it was demolished. OP-1 has given no explanation for changing the specification by hand from 'Imported marble'. To 'tiles'. Complainants contest the contention of OP-1 that 36 month timeline for the complainants started from the date of endorsement, stating that endorsement letter dated 11.09.2008 itself provides that terms and conditions of the agreement dated 18.11.2006 shall be applicable to the complainants and that as per this letter all the rights, direct or indirect, pertaining to the said flat stood transferred in the name of complainants. OP-2 has not placed on record any material to show that there was a default on the part of complainants. OP-2 has already collected one year's maintenance charges in advance.

9. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the Complaint, based on their Complaint/Reply, Rejoinder, Evidence, Written Arguments, , and Oral Arguments advanced during the hearing, are summed up in the Table at Annexure B.

10. The contention of OPs that this Commission lacks pecuniary jurisdiction is not valid. Under Section 21 of the Act, Commission has the jurisdiction where value of goods and services and compensation, if any, claimed exceeds Rupees one crore. The objection that the Complaint is barred by limitation is also not accepted. The OPs have failed to deliver the possession of the unit to the complainant till date and therefore, the cause of action is continuing. There is no documentary evidence to support the contention of the Opposite Parties that the reasons pleaded by them, can be construed as 'Force Majeure'. The contention of the OPs that the parties are bound by the agreement is also not acceptable. Hon'ble Supreme Court in **Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raglivan II (2019) CPJ 34 (SC)** held that "a term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder the incorporation of one sided clause in an agreement constitute an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling flats by the builder, the appellant-builder cannot seek to bind the respondent with such one sided contractual terms."

11. Hon'ble Supreme Court in **Wg. Cdr. Arifur Rahman Khan And Aleya Sultana and Ors. vs DLF Southern Homes Pvt. Ltd. & Ors.** (2020) 16 SCC 512 and in **Ireo Grace Realtech Pvt.Ltd. Vs. Abhishek Khanna & Anr.** (2021) 3 SCC 241, held that failure of the developer to comply with contractual obligations to provide flats within contractually stipulated period would amount to deficiency in service and thus amenable to the jurisdiction of consumer fora. Further the Hon'ble Supreme Court in **Wg. Cdr. Arifur Rahman Khan** case (*supra*) also observed that "to uphold the contention of the developer that the flat buyer is constrained by the terms of the agreed rate irrespective of the nature or extent of delay, would result in miscarriage of justice----- jurisdiction of the consumer forums to award just and fair compensation as an incident of its power to direct the removal of deficiency in service is not constrained by terms of a rate which is prescribed in an unfair bargain----- there is no absolute embargo on the award of compensation beyond the rate stipulated in the flat buyers agreement where handing over of the possession of a flat has been delayed". In this case, the Hon'ble Supreme Court also held that execution of conveyance deed would not operate to preclude the flat buyers from claiming compensation.

12. For the reasons stated hereinabove as well as in Column 5 of Table at Annexure-B, and after giving a thoughtful consideration to the entire facts and circumstances of the case, various pleas raised by the learned Counsel for the Parties, all the Consumer Complaints CC 1512, 1513, 1539, 1540, 1541 and 1706 of 2017 are allowed/disposed off with the following directions/reliefs: -

(i) The OPs shall pay delay compensation in the form of simple interest @ 6% per annum on the amount paid by the complainants from the committed date of possession till the date of offer of possession as given in Table at Annexure-I.

(ii) OPs shall, within 30 days of this order, intimate to the complainants in the consumer complaints covered under this order and publish on their website for the information of all the allottees, following details:-

a. Total amount collected under contingency fund, administration fund, BOCW Cess and the use to which such fund(s) has been put or will be put in future.

b. Details of amount collected under the electricity charges, broad item-wise amount spent out of same and if any balance is still left under this head, how it proposes to use the same. It should also intimate to the complainants/publish on web-site as to how the rate of Rs.100/- per sq.ft. charged to each unit has been worked out.

c. Unit-wise break-up of the covered area and proportionate common area added to each unit for determining its super area as well as item-wise break-up of the common areas. If the complainants contest their units' area so notified, they may file a written request to OP within 45 days, for joint inspection and measurement. If the result of such joint inspection show any discrepancy/shortfall in covered/super area of the unit(s) of complainants from the area for which they have been charged, OPs shall suitably address such issues within 45 days of date of such joint inspection.

(iii) OPs shall transfer the IFMS Security to LCA for use for the intended purpose within 30 days of this order.

(iv) As regards facilities/features promised in the brochure but not provided to the complainants on the ground that these have not been incorporated in the agreement, OP shall pay a lumpsum compensation of Rs.1.00 lakh (per unit) to the complainant(s) in each of the six cases covered under this order.

(v) The OPs shall pay a sum of Rs.25,000/- as cost of litigation to the complainant(s) in each of the six cases covered under this order.

(vi) The liability of the OPs shall be joint as well as several.

(vii) The payments in terms of this order shall be paid within three months from today.

13. Pending IAs, if any, also stand disposed off.

Annexure-A				
Details of the Unit and other related details				
Sr No	Particulars	Case No/ Complainant	Case No/ Complainant	Case No/ Complainant
		CC/1512/2017	CC/1513/2017	CC/1539/2017
		Anil Rawat & Anr.	Gopal Gupta & Anr.	Mahesh Kumar Sharma & Anr.
		The Legend Sector 57, Gurgaon	The Legend Sector 57, Gurgaon	The Legend Sector 57, Gurgaon
1	Project Name/Location etc			
2	Apartment no	C6-501	C2-302	C6-103
3	Size (Built up/Covered/Super Area)	2964 sq. ft.	2327 sq. ft.	2309 sq. ft.
4	Date of signing Buyers Agreement (with original allottee)	18.11.2006	18.07.2009	22.06.2009
5	Committed date of possession as per Agreement (with Grace period, if any)	18.11.2009	18.07.2012	22.06.2012
6	In case the Complainant(s) are not the original allottees, D/o Transfer by the OP(s) in the name of Complainant(s)	11.09.2008	-	-
7	D/o Obtaining OC by the OP	21.10.2010	21.10.2010	21.10.2010
8	D/o Offering Possession	23.10.2010	20.07.2012	-
9	D/o Signing Conveyance deed/sublease deed	10.02.2011	29.11.2012	10.02.2011
10	Total Consideration as per agreement	Rs. 53,38,164/-	Rs. 80,07,207/-	Rs. 73,01,058
11	Amount Paid	Rs. 72,25,417/-	Rs. 64,05,766/-	Rs. 92,64,720/-
12	D/o Filing CC in NCDRC	26.05.2017	26.05.2017	29.05.2017
13	D/o Issue of Notice to OP(s)	04.07.2017	04.07.2017	04.07.2017
14	D/o Filing Reply/Written Statement by OP1	14.08.2017	14.08.2017	16.08.2017
15	D/o Filing Reply/Written Statement by OP2	14.08.2017	14.08.2017	14.08.2017
16	D/o filing Rejoinder by the Complainant(s)	18.10.2017	18.10.2017	27.10.2017
17	D/o Filing Evidence by way of Affidavit by the Complainant(s)	18.10.2017	18.10.2017	27.10.2017
18	D/o Filing Evidence by way of Affidavit by the OP-1	01.03.2018	01.03.2018	01.03.2018
19	D/o Filing Evidence by way of Affidavit by the OP-2	07.03.2018	07.03.2018	07.03.2018
20	D/o filing Written Synopsis by the Complainant(s)	24.09.2018 & 10.01.2023	24.09.2018 & 10.01.2023	24.09.2018 & 10.01.2023
21	D/o filing Written Synopsis by the OPs	28.02.2023	28.02.2023	28.02.2023

Annexure-A				
Details of the Unit and other related details				
Sr No	Particulars	Case No/ Complainant	Case No/ Complainant	Case No/ Complainant
		CC/1540/2017	CC/1541/2017	CC/1706/2017
		Mini Wahi	Rita Kalra	Promil Sachdev & Anr.

	The Legend Sector 57, Gurgaon	The Legend Sector 57, Gurgaon	The Legend Sector 57, Gurgaon
1	Project Name/Location etc		
2	Apartment no	C6-201	C1-301
3	Size (Built up/Covered/Super Area)	2964 sq. ft.	2964 sq. ft.
4	Date of signing Buyers Agreement (with original allottee)	16.04.2005* 31.01.2009**	06.06.2009 23.06.2006
5	Committed date of Buyers Agreement (with Grace period, if any)	31.01.2012	06.06.2012 23.06.2009
6	In case the Complainant(s) are not the original allottees, D/o Transfer by the OP(s) in the name of Complainant(s)	18.08.2008	- 18.07.2007
7	D/o Obtaining OC by the OP	21.10.2010	21.10.2010 21.10.2010
8	D/o Offering Possession	23.10.2010	05.10.2011 08.03.2011
9	D/o Signing Conveyance deed/sublease deed	10.03.2011	30.03.2012 21.06.2011
10	Total Consideration as per agreement	Rs. 49,76,556/-	Rs. 57,72,500/- Rs. 51,89,964/-
11	Amount Paid	Rs. 67,24,684/-	Rs. 75,31,436/- Rs. 70,67,738/-
12	D/o Filing CC in NCDRC	26.05.2017	26.05.2017 14.06.2017
13	D/o Issue of Notice to OP(s)	04.07.2017	04.07.2017 04.07.2017
14	D/o Filing Reply/Written Statement by OP1	18.08.2017	16.08.2017 16.08.2017
15	D/o Filing Reply/Written Statement by OP2	-	- 14.08.2017
16	D/o filing Rejoinder by the Complainant(s)	18.10.2017	23.10.2017 18.10.2017
17	D/o Filing Evidence by way of Affidavit by the Complainant(s)	18.10.2017	23.10.2017 18.10.2017
18	D/o Filing Evidence by way of Affidavit by the OP-1	01.03.2018	01.03.2018 01.03.2018
19	D/o Filing Evidence by way of Affidavit by the OP-2	07.03.2018	07.03.2018 07.03.2018
20	D/o filing Written Synopsis by the Complainant(s)	24.09.2018 & 10.01.2023	10.01.2023 24.09.2018 & 10.01.2023
21	D/o filing Written Synopsis by the OPs	28.02.2023	28.02.2023 28.02.2023

*(i) with the original allottee - 16.04.2005

***(ii) with the complainant – 31.01.2009

■ Annexure-B				
Sr No	Issue(s) raised/ Prayer(s) by Complainant	Plea(s)/Contention(s) of the Complainant(s)	Plea(s)/Contention(s) of the OP(s)	Remarks/observation(s) of the Commission
1.	2.	3.	4.	5.
				OP-1 is liable to pay delay compensation from committed date of possession as per Agreement, i.e. 18.11.2009 till the date of offer of possession i.e. 23.10.2010.As regards contention of the OP-1, relying on judgement of Hon'ble Supreme Court in Wg. Commander Arifur Rahman & Aleya Sultana and Anr. Vs. DLF Sothern Homes Pvt. Ltd. [(2020) 16 SCC 512] , that in cases where complainants are not the original

i.	Compensation for Delay in Possession	<p>(i) Due date of possession as per Agreement was 18.11.2009, Offer of possession cum final demand was made on 23.10.2010. Last payment was made on 16.11.2010, conveyance deed was signed and possession was handed over on 10.02.2011.</p> <p>(ii) The complainants were not compensated for delay, either in terms of the Agreement or otherwise.</p>	<p>(i) OP-1 obtained O.C. on 21.10.2010, thereafter issued final call letter dated 23.10.2010 to complainants asking them to take possession.</p> <p>(ii) Complainants not being original allottees, got their agreement executed after the initial execution of Buyer's Agreement, thus period calculation can only be said to commence thereafter, and hence there was no delay.</p> <p>(iii) Delay penalties were dealt with final demand letter and have been accepted by the complainants and have been settled.</p>	<p>allottees, but subsequent transferees, the committed period for possession calculations and consequently payment of delay compensation has to be from the date of such transfer and not from the date of agreement with the original allottee, it is to be noted that Hon'ble Supreme Court in subsequent judgment</p> <p>M/s Laureate Buildwell Pvt. Ltd. Vs. Charanjeet Singh (2021) SCC OnLine SC 479 stated that <i>"this court is of the opinion that per se bar to the relief of interest enunciated by the decision in Raje Ram (supra) (HUDA Vs Raje Ram) which was applied in Wg Commander Arifur Rahman (supra) cannot be considered a good law. The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent"</i>- A perusal of letter dated 11.09.2008 shows that OP-1 transferred all rights direct or indirect, pertaining to the said flat, in the name of complainants, along with complete deposited amount of Rs.48,04,344/- against the said flat. Hence, considering all the facts & circumstances of this case, we find that all the complainants, including those who are not the original allottees but subsequent transferee, like the complainants in CC/1512/2017, would be entitled to count the committed period of possession and delay compensation etc., as applicable to the original allottees.</p>
ii.	<p>Refund of Club Membership Charges</p>	<p>These charges are illegal- no club was provided by OP-1.</p> <p>- the Club itself became operational only 4 years after possession was offered by OP-1 and that too after lot of efforts by the residents.</p> <p>- Cost of these services was included in the price charged from complainants in addition to Rs.40,000/- charged for club membership. No such facility as club under the licence, club membership charges admittedly used for construction of community building- O.C. received only on 28.05.2012.</p>	<p>(i) OP-1 obtained OC on 28.05.2012 and since then the club is operational.</p> <p>(ii) Cost of these services were not included in the price charged from complainants in addition to Rs.40,000/- charged for club membership.</p>	<p>(i) Club has been provided and is operational. The delay in making club operational is admitted (OC of project received on 21.10.2010 but for club on 28.05.2012). OP was expected to make club operational/obtain its OC also simultaneously along with OC for the project. To this extent, there is a deficiency on the part of OP-1</p> <p>ii.</p> <p>(iii) Cost of these services is not included in the price stated in the Agreement.</p> <p>(iv) Hence, complainants are not entitled to refund of any amount on account of club membership charges.</p>
iii.	<p>Return of contingency fund deposit</p>	<p>OP has wrongly levied these charges @Rs.5/- per sq.ft., contingency fund could only be for the future upkeep of the residential complex, OP-1 has enjoyed this money at the cost of residents for the past 7</p>	<p>No specific response given, except for denying the allegations/contentions of complainants.</p>	<p>As the Agreement specifically provides for payment of contingency deposit @ Rs.5/- per sq.ft. the complainants are not entitled to refund of this item. However, considering that OP has not stated clearly as to for what purpose this amount has been used or will be used, OP should, in the interest of fairness and transparency declare/disclose to the complainants, and also put on its website for</p>

		years without accounting for it.		the benefit of all the allottees of the project, the use to which such fund has been put or will be put in future.
iv.	Refund of excessive electricity charges	<p>OP-1 has levied this unsubstantiated arbitrary and illegal charges @Rs.100/- per sq.ft. on the increased super area, when added up for 529 apartments and villas in the complex, it amounts to Rs.15 crores, as against this, estimated cost of electrification for the complex as provided by DHBVN was only Rs.44.65 lakhs.Further, while the charges were paid in November 2010, the mains connection did not arrive until as late as January 2012 and the complainants as also other residents continued to pay the Electricity at the higher rate of Rs.12 per unit.The constant use of DGs also led to considerable wear and tear of power back up equipment, burden of which is borne by complainants.The OP-1 installed two sub-standard transformers for power supply.</p>	OP has denied these allegations.	<p>(i)Except for denying all the allegations/contentions of the complainants on this issue, OP-1 has not given any specific response as to how the rate of Rs.100/- per sq.ft. to be charged to each unit has been arrived at and how much amount had been collected under this head and how much amount out of amount collected has been spent out and on what items.</p> <p>(ii)In the Agreement, under the Electric Connection Charges, it is mentioned ‘to be billed’.Agreement states that electric connection charges, and this amount is inter-alia payable to cover the cost of HSEB for the service, connection, service lines, substation, equipment, cost of area under the subject installation and security deposit etc. shall be extra and payable by the allottee.The allottee will be required to pay the charges pro-rata per sq.ft. and expenses will be charged in proportion to the super area of the units.</p> <p>(iii) Such charges are to be levied by OP-1 on actual basis and cannot be a source of profit to OP-1.Hence, in the interest of fairness and transparency, OP-1 should declare/disclose to the complainants, and also put on its website for the benefit of all allottees of the project,details of amount collected under this head and broad item-wise amount spent out of same and if any balance is still left under this head, how it proposes to use the same. It should also disclose/declare as to how the rate of Rs.100/- per sq. ft. to be charged to each unit has been worked out.</p>
v.	Refund of IFMS	<p>OP-1 levied this charge @Rs.50/- per sq.ft., executed a maintenance agreement dated 18.11.2010 between itself, OP-2, The Legend Condominium Associates (LCA) and the complainants; clause 5.2 of which provided that that sum was to be loaned to OP-1 for 15 years @6% interest rate, thus OP-1 is enjoying a sum of approx.. 6 crores at the cost of complainants, OP-2 is a sister concern of OP-1 and at the time of signing the said agreement, LCA was a Sham Association, Section 74 of Companies Act 2013 prohibits the OP to continue to enjoy the deposit.</p>	<p>While denying this allegation of complainants in this regard, OP contends that maintenance charges were levied in terms of said maintenance agreement which was essential for the daily upkeep and maintenance of the complex. The maintenance of common areas and facilities were handed over to LCA by OP-1, who in turn appointed the maintenance agency. These charges were mentioned in the Buyer’s Agreement which was agreed by complainants.</p>	<p>As levying of maintenance security @ Rs.50/- per sq.ft. has been specifically mentioned in the Buyer’s Agreement, complainants are not entitled to refund of the same.However, considering that LCA is now maintaining the common areas and facilities, OP-1 need to transfer this fund to this LCA for use for the intended purpose, subject to LCA having a duly elected body/managing committee etc. in place as per its byelaws/Rules etc.</p>
				The agreement provides for Registration/Stamp duty charges as may be applicable. Other than these, agreement does

vi.	Refund of Administration charges	OP-1 wrongfully collected from each buyers including complainants, Rs.25,000/- and service tax thereon towards these charges.The charges were not provided in the Buyer's Agreement.	OP-1 while denying all allegations on this count, states that these charges are payable on account of getting the conveyance deed and it was part of the agreement.	not envisage payment of any administration charges.During the oral arguments, OP-1 states that these are to cover general costs for registration/conveyance deed etc.OP-1 being a reputed builder, is expected to declare/disclose in a transparent manner as to how much and in what manner funds collected under such heads have been utilized.
vii.	Refund of illegally charged amount on account excess area charges	OP-1 has demanded additional amount on account of addition to super area without substantiating the increase.Building plans were approved as per size of apartments, OP-1 has not shown any approval from DTCP or any other Department for the change in area or layout, covered area actually constructed on 5 th floor is less than sanctioned area, all charges, including electricity, IFMS etc. have been levied on the increased super area .Section 14 of RERA prohibits increase in area without express consent.	The Buyer's Agreement provided that final areas of the unit to be ascertained after its completion of construction, and the same was intimated to complainants vide final call letter.	Clause 3 of the agreement (in CC/1512/2017) states that super area is 2964 sq.ft., BSP rate per sq.f. is Rs.1801 and BSP Rs.53,38,164/-.Clause 4(a) states that the price mentioned in clause 3 is escalation free. Clause 15 states the allottee shall pay the price of the apartment on the basis of super area i.e. covered area inclusive of proportionate common area as determined by the company.Clause 11 states the plans, designs are tentative and Company may effect such various/alternations as deemed appropriate.Clause 12 provides that if as a result of alternation etc., there is either reduction or increase in the super area of the said unit, original agreed rate per sq.ft. and other charges will be applicable for the changed area.Annexure-I to the said agreement defines the super area as sum of the residential unit and its prorata share of common areas in the entire tower and complex.This annexure also explains what constitutes residential unit area (covered area) and common areas and gives a list of the items includable in the common area.This Annexure reiterates that super area mentioned in the agreement is tentative.However, the agreement does not provide as to upto which extent the company can increase/ decrease the super area, generally some limits like $\pm 10\%$ etc. are seen mentioned in the agreement of developers.Further the agreement does not state any proportion of covered area to super area to be maintained, which can result in developer increasing only the common areas without any increase in the covered area.Hence, the complainants have genuine concerns whether they have actually been given the so called increased super area and whether such increase is only in common areas or both in covered area and common area.Any disproportionate increase in common areas without any increase in covered area may seem to be unreasonable.Hence, the complainants have a right to know the exact break up of the final super area into final covered area and final common areas as well as item-wise break-up of the common area so that they have an opportunity to satisfy themselves by way of actual measurements and in case of any major variation , contest the same with OP.Hence, in the interest of fairness and transparency, OP should disclose/declare such details to complainants and also put on its website for the benefit of all allottees.
				There is no specific mention of BOCW Welfare Cess being payable by complainants

viii.	Refund of illegally charged amount on account of BOCW Welfare Cess	These were not to be paid as per agreement and are the liability of OP-1	As per agreement, these amounts were payable, it was categorically agreed that all other taxes and charges as applicable were payable by the complainants.	<p>in the Agreement. Agreement only states that service tax or any other taxes are payable as may be applicable.</p> <p>Building & other Construction Workers Welfare Cess (BOCWW Cess) is a means to provide health & welfare measures for the workers engaged in building and other construction works, and is levied under the provisions of Building & Other Construction Workers Welfare Cess Act, 1996. This cess is different from service tax. There is no provision in the agreement to make allottees liable to pay such statutory tax. Ideally, the OP-1 should have clearly defined the liability of the parties, whether OP or allottees, to pay such Cess. In the present circumstances, where such statutory cess has already been collected from the allottees, it is just and fair that OP-1 disclose and declare to the complainants and also put on its website for the benefit of all allottees, the total amount collected under this head, amount already paid/deposited to/with concerned government authority, further amount payable, if any, balance available if any, and how it proposes to use the balance.</p>
				<p>Annexure-III to the Agreement provides details of specifications for various locations/ parts of unit and OP-1 is bound to provide the same to the complainants. As regards promises made, amenities and specifications in the brochure, which are not subsequently made part of the Agreement, in the present case there is an admission on the part of OP-1 that certain amenities/facilities were promised in the brochure but not made part of the agreement signed between the parties. It was contended by the OP-1 that they are liable to provide only the facilities/amenities as agreed to in the agreement and not what was promised in the brochure. Complainants on the other hand argued that OP-1 is liable for promises made in the brochure and if any developer makes any false promises in the brochure/advertisement to lure the people to its projects/prospective projects, it amounts to unfair trade practice.</p> <p>Section 2(1) (r) of Consumer Protection Act, 1986 defines unfair trade practice as follows:-</p> <p><i>“unfair trade practice” means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—</i></p> <p><i>.....”</i></p> <p>Complaint as defined under Section 2(c) of the</p>

ix.

Unauthorised changes in the specifications (prayer under para 1(ix) to 1(xi)

(i) While the brochure and sample flat shown by OP-1 promised imported marble in living and dining room, OP -1 actually used tiles in place of imported marble.

(ii) While the brochure stated all doors to be made of hardwood frames with European style flush panel, the doors actually delivered by OP-1 are hollow, made of two sheets of pre-laminated boards. Doors opening to the balcony are not wood at all but anodized power coated.

(iii) Sample flat showed sanitary fittings by Kohlar, however, apartment handed over to the complainants carries fittings of a much inferior quality from a company called COTTO.

(i) The specifications are as provided in the agreement, the specifications of the sample flat are irrelevant what is relevant is the specifications agreed between the parties. Sample flat basically are provided for layout, sample flat has since been demolished. Most of the buyers' agreements were executed with earstwhile buyers and it is not open for complainants to claim that these specifications were not agreed to. The words 'tiles' have been duly countersigned.

(ii) Brochure is of no avail to the complainants as neither was that represented to the complainants nor it is part of agreement between the parties.

(iii) Fittings have been provided as per agreement between the parties.

Act mean any allegation in writing made by a complainant that-

"(i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;

(ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;

(iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

....."

Service as defined under Section 2 (o) includes housing construction.

Section 12 of the RERA Act 2016 contains obligations of promoter regarding veracity of advertisement or prospectus, which is reproduced below:-

"Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

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Advertisement has been defined under Section 2(b) of the RERA Act as follows:-

"advertisement" means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes;"

It was held by Hon'ble Supreme Court in **Wing Commander Arifur Rahman Khan and Aleya Sultana and Ors Vs DLF Southern Homes Pvt Ltd** (2020) 16 SCC 512 *"the developer must be held accountable to its representations. Flat purchaser who invest in a flat does so on an assessment of its potential. The amenities which the builder has committed to provide impinge on the quality of life for the families of the purchasers and the potential for appreciation in the value of the flat. The representations held out by the developer cannot be dismissed as chaff"*

				<p><i>“A developer whom has breached clear representation which has been made to the buyers of the amenities which will be provided to them should be held accountable for the process of law. To allow the developer to escape their obligation would put the premium on false assurances and representations made to the purchasers”.</i></p> <p>Hence, any failure on the part of developer in not providing the Unit to the complainants as per specifications alongwith with facilities and amenities promised in the brochure and/or agreement, amounts to deficiency in service, making it liable for rectification of the deficiency or compensate the complainants to the extent of such deficiency. Further, if any developer makes any representations/promises in the brochure to lure the people/prospective allottees to book units in his project but after accepting the initial amounts does not include such promised amenities/facilities in the agreement , it will amount to unfair trade practice, making the developer liable for the same.</p>
x.	Delay in handing over the basement parking and reduced number of visitor parking slots	<p>Apartment owners were entitled to one covered parking in basement in addition to open parking on the ground. Complainants purchased the Apartment with two parking slots. The basement parking was not made available until September 2012. Non-availability of basement parking forced residents to park their cars on the surface causing chaos & hardship. In addition, number of visitor parkings provided by OP-1 is only 45 against sanctioned 147.</p>	<p>Complainants have been allotted parking in accordance with terms of their agreement, further as per agreement, it was not mandatory on the part of OP-1 to give visitors parking and same was an additional benefit. OP-1 denied delay in providing basement parking and reduced number of visitor parking.</p>	<p>Complainants have not placed any document on record to show that sanctioned number of parkings is 147 against which only 45 have been provided. Hence, no specific relief can be granted under this item.</p>
xi.	Compensation for non-existent and deficient common area facilities	<p>OP-1 did not deliver the promised features/facilities like club house, joggers park, piped gas, intercom, grand lobby, murals/artistic stones & non-spacious elevators, reduced percentage of open area/green area etc.</p>	<p>All facilities were provided in accordance with Buyers’ Agreement, the brochure is not subject matter of agreement, parties were only governed by terms of the agreement and now are only governed by the terms of the conveyance deed, the sale price of flats do not include either the school or shops, piped gas is neither part of the specifications nor was required to be provided by OP-1, there is no provision for pipe gas in Gurgaon, provision of intercom services was not a part of agreed specifications, the apartment blocks are as per specifications.</p>	<p>Complainants have not placed on record any document to establish that OP has not provided various promised facilities/features listed under this item as promised. Hence no specific relief can be granted under this item. However, the contention of OP-1 that OP is not liable for providing any facility/feature promised in brochure which is not included in the agreement, is not valid. This issue has been dealt in detail under Sr.No. (ix) above.</p>
	Compensation for exposing complainants to extreme risk and hazard on account	<p>The site visit report by M/s M.J. Engineers Consultants on inspection of electrical,</p>		<p>Complainants have not placed on record any specific document(s) to establish their</p>

xii.	of poor mechanical electrical and plumbing works	basement, plumbing and fire-fighting works show that OP-1 was deficient on all fronts.	OP-1 has denied these allegations.	allegations on this point.Hence no specific relief can be granted under this item.
xiii.	Return the satisfaction note, no objection note, handing over/taking over note and other blank papers which were forcibly got signed by it from the complainants before registration of apartments.	OP-1 forced complainants to sign a slew of documents, including the maintenance agreement, as a pre-condition to handing over the possession as well as carrying out registration.	OP-1 has denied these allegations.	Complainants have not been able to establish that such documents were got signed from them by OP-1 forcibly.Hence, no relief can be granted under this item.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER

DR. INDER JIT SINGH
MEMBER