

**BEFORE THE HON' BE CHAIRPERSON AND MEMBERS, NATIONAL
GREEN TRIBUNAL, PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 493/2023**

IN THE MATTER OF:

PURAB PREMIUM APARTMENTS ALLOTTEES

ASSOCIATION

.....

APPLICANT

VERSUS

GREATER MOHALI AREA

DEVELOPMENT AUTHORITY & Ors.

RESPONDENTS

INDEX

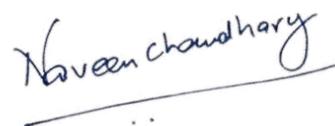
S. No.	PARTICULARS	PAGE NO.
1.	OBJECTIONS TO THE JOINT COMMITTEE REPORT DATED 22.01.2024 ON BEHALF OF THE APPLICANT	
2.	ANNEXURE O1: Copy of order by Hon'ble National Consumer Disputes Redressal Commission (NCDRC), New Delhi, dated 04.05.2023	
3.	ANNEXURE O2: Copy of the order Regarding Non-Availability of Underground Car Parking by Hon'ble NCDRC dated 07.11.2023	
4.	ANNEXURE O3 COLLY: Photographs of the Basement parking at the project site	
5.	ANNEXURE O4: Copy of the Letter no. 7151 issued by Punjab Pollution Control Board dated 21.11.2022 directing all construction to be stopped at site.	
6.	ANNEXURE O5 COLLY: Photographs of ongoing construction activities at the project site	

7.	ANNEXURE O6 COLLY: Copy of news clippings regarding the ongoing water crises at the project site	
8.	ANNEXURE O7 COLLY: Copy of pictures depicting non-implementation of Rainwater Harvesting System for collection of rooftop rainwater at the project site	
9.	ANNEXURE O8 COLLY: Copy of Pictures of the basement of project site depicting the Garbage falling and scattered into the basement	
10.	Proof of Service	

THROUGH

Place: New Delhi

Date: 02.07.2024



NAVEEN CHAUDHARY

ADVOCATE

D/2164/2010

**CH. No. 165, Lawyers Chamber
Block-I,
Delhi High Court, New Delhi**

9999998399

Adv.naveenchaudhary@gmail.com

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**OBJECTIONS TO THE JOINT COMMITTEE REPORT DATED
22.01.2024 BY THE APPLICANT**

MOST RESPECTFULLY SHOWETH:

1. That the present objections to the Joint Committee Report dated 22.01.2024 regarding the non-compliance of conditions of Environmental Clearance granted to the housing project namely "Purab Premium Apartments", are as under:

A. Under Para 1 of the observations, it has been observed that,

"In the project, construction work of 1620 flats, 1 community centre, 02 sports complex, 1 football ground, 1 badminton court and 52 SCFs has been completed. As informed by the representative around 850 flats have been given occupancy and around 700 families are residing in the project."

It is submitted that it is incorrect to mention that the construction work of 1620 Flats has been completed. As no Completion Certificate and Occupancy Certificates have not been issued by the Competent Authority and the said fact has been recorded vide order dated 04.05.2023 in complaint Nos. CC 1278 of 2016 and CC 1634 of 2018 titled as 'Purab Premium Apartment Allottees Association vs Greater Mohali Area Development Authority' before the Hon'ble National Consumer Disputes Redressal Commission, New Delhi. Copy of Order dated 04.05.2023 is annex herewith as **ANNEXURE O1.**

- B. That it has also been observed vide order in MA 231 & MA 232 dated 07.11.2023 before the NCDRC that possession of basement Car Parking has also not been provided. It is submitted that Respondent No. 1 due to glaring defects, has not been able to allot parking slots and hand over possession of underground car parking which is terribly leaking. It is submitted that as per conditions mentioned in EC under Operation Phase condition No. XII is stipulated that "*Traffic congestion near the entry and exit points must be avoided. Parking should be fully internalized and no Public area space should be utilized*". Non-compliance to this condition can not only lead to serious accidents especially caused due to Fire as residents are being compelled to park their vehicles in Public Area in open due to non-availability of designated parking slots in the basement but also is a health hazard. The heavy leakages, seepages from roofs, walls of basement coupled with leakages of sewage/domestic effluents from the Sewerage Pipes in the basement and the dirty water getting mixed up with the piled up garbage in the basement thereby chocking the drains causing stink and pollution in the basement. The entire basement area has become filthy and unhygienic and could result in

outbreak of fatal deceases like Malaria, Dengue and Chikungunya. Copy of the order dated 07.11.2023 regarding non availability of underground car parking and photographs of basement parking depicting an alarming state of affairs are annexed herewith as **ANNEXURE O2** and **ANNEXURE O3 COLLY**, respectively.

- C. That it is necessary to mention here none of the stated amenities are yet completed and operationalised & this fact has also been recorded in the said National Consumer Disputes Redressal Commission (NCDRC), New Delhi judgement. It is submitted that Punjab Pollution Control Board vide letter No 7151 dated 21.11.2022 directed Respondent No. 1 to stop all the construction activities at the project site. However, Respondent No. 1 went ahead and continued the construction process which is in complete violation of orders passed by PPCB. A copy of the letter no. 7151 dated 21.11.2022 is annexed herewith as **ANNEXURE O4** and Photographs of continued construction activities are annexed herewith as **ANNEXURE O5 COLLY**.
- D. That Respondent No. 1 has failed to provide fresh canal water supply. It is pertinent to mention herein that that fresh canal water supply through tankers was just a temporary arrangement which had to be resorted when the sole functional borewell went out of order. Due to these facts, the residents were/are not getting regular supply of treated fresh water and there is threat to the water supply requirement due to the borewells having less residual life due to over exploration of borewell water. Copy of media reports regarding water crises in the project site is annexed herewith as **ANNEXURE O6 COLLY**.

- E. That as per the observation no record regarding annual maintenance of 4 rain water harvesting PITS has been maintained and the surface run-off from the Project is also being discharged into the RWH PITS, it is submitted that in addition to the observation of the Joint Committee, the GMADA has not implemented Rainwater Harvesting System for collection of rooftop rainwater for further use of the same for recharging ground water which is in violation of conditions mentioned in EC i.e., *“Rainwater harvesting for roof-off should be implemented Before recharging the roof run-off, pre-treatment must be done to remove suspended matter, oil and grease. However, no run off from gardens/green area/ roads/pavement shall be connected with the ground water recharging system”*. Copy of pictures showing non-implementation of Rainwater Harvesting System for collection of rooftop rainwater are annexed herewith as **ANNEXURE O7 COLLY**.
- F. It is submitted that the garbage chute have not been designed/ constructed as per the Industry practice and the mixed solid waste is falling and spreading in the open in basement area. Also, the Respondent No. 1 has not provided any robust in-site management system for conversion of bio-degradable component of Solid Waste into manure as per the conditions mentioned in EC i.e., *“the solid waste generated should be properly collected and segregated. The recycled solid waste shall be sold out to the authorized vendors and inerts shall be sent to disposal facility. The bio- degradable solid waste shall be adequately treated as per the scheme submitted by the project proponent. Prior approval of competent authority should be obtained if required”*. Copy of Pictures of the Garbage falling in the basement lying scattered is enclosed here as **Annexure O8 COLLY**.

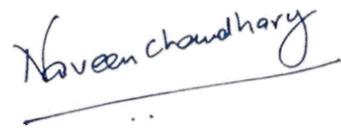
G. That as per the joint committee report, Respondent No. 1 was directed to immediately install and commission an STP of adequate capacity for total generation of sewage/domestic effluent for the treatment and scientific disposal of the treated effluent as also regarding provision of treated water and Solid Waste Management and comply with other stipulations/ conditions of EC. However, it is submitted that even after submission of Report by the Joint Committee more than five months ago, the Project Proponent has not shown any inclination to take any corrective measures to installation and commission a Captive STP of adequate capacity, supply of treated Water, implementation of solid waste management. Further, even the work has not been started till date. Rather, the objections filed by the Project Proponent indicate lack of seriousness on their part.

APPLICANT

THROUGH

Place: New Delhi

Date: 02.07.2024



NAVEEN CHAUDHARY

ADVOCATE

D/2164/2010

**CH. No. 165, Lawyers Chamber
Block-I,
Delhi High Court, New Delhi**

9999998399

Adv.naveenchaudhary@gmail.com

305
NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 1278 OF 2016

1. PURAB PREMIUM APARTMENT ALLOTTEES
ASSOCIATION

EDUCATION ZONE, SEC-77, MOHALI NEAR DEEP
NAGAR, SOHANA, DISTRICT S.A.S NAGAR MOHALI-
160055

.....Complainant(s)

Versus

1. GREATER MOHALI AREA DEVELOPMENT
AUTHORITY

PUDA BHAVAN, SEC-62, S.A.S NAGAR, MOHALI-160055Opp.Party(s)

CONSUMER CASE NO. 1634 OF 2018

1. PURAB PREMIUM APARTMENT ALLOTEES
ASSOCIATION

EDUCATION ZONE, SECTOR 77, MOHALI NEAR DEEP
NAGAR, SOHANA, S.A.S NAGAR,
MOHALI-160055

PUNJAB

2. .

.....Complainant(s)

Versus

1. GREATER MOHALI DEVELOPMENT AUTHORITY

PUDA BHAWAN, SECTOR-62, S.A.S. NAGAR

MOHALI-160055

PUNJAB

.....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. Sahil Sethi, Advocate

Ms.Nikita Sharma, Advocate Ms.Arushi Mann, Advocate

Mr. Parampreet S.Bajwa, Advocate

For the Opp.Party : Ms. Zehra Khan, Advocate

Mr. Sushrut Meena, Advocate

Mr. Adarsh Kumar Pandey,

Advocate

Dated : 04 May 2023

ORDER

DR. INDER JIT SINGH, MEMBER

1. These two Consumer Complaints (CCs) have been filed by the Complainant against Opposite Party as detailed above, inter alia praying for directions to the OP to:-
 - i. To handover possession of Apartments, to allottees which are complete in all respects and in conformity with the approved plans and brochure and with all additional facilities and as per quality standards promised, and execute all the necessary and required documents in respect of the said apartment in favour of the respective allottees;
 - ii. Not to claim “Maintenance Charges” and “Corpus towards Welfare Society” unless all additional facilities promised in the brochure are provided in the project;
 - iii. Not to raise any additional demand on account of alleged increase in super area;
 - iv. Refund to the allottees, an amount proportionate to the reduction in covered area/super built up area of the apartments;
 - v. Pay interest @ 12% per annum on the amount deposited by respective allottee with the OP, with effect from 36 months from the date of draw, i.e. from 21st March, 2015, till the date actual physical possession as per clause (a) above is handed over by the OP, along with all necessary documents and common areas and facilities.
 - vi. Refund the service tax collected from the allottees along with interest at the rate of 6% per annum from the date of deposit till the date of refund;
 - vii. Pay a sum of Rs.50,000/- (Rupees Fifty Thousand) to each allottee, towards litigation costs.
2. Since the facts and question of law involved and the reliefs prayed for in these complaints are similar/identical and filed by same complainant against the same Opposite Party except for minor variations in the dates, events and flat numbers of allottees etc., these complaints are being

disposed of by this common order. However, **307** the sake of convenience, Consumer Complaint (CC) No. 1278 of 2016 is treated as the lead case and facts enumerated herein under are taken from CC 1278/2016. CC 1278 of 2016 was filed by the Complainant Association on behalf of 130 members. CC 1634 of 2018 was initially filed under Section 12(1)(b) of the Consumer Protection Act, 1986 by the Complainant Association on behalf of 70 members and was admitted on 18.12.2018. Thereafter one more Complainant was impleaded vide Order dated 22.02.2022.

3. Notice was issued to the OP. Parties filed Written Statement/Reply, Rejoinder, Evidence by way of an Affidavit and Written Arguments/Synopsis, etc.

4. It is averred / stated in the Complaint that:-

- i. The Complainant is a society registered under the Societies Registration Act, 1860, with the primary objective of protecting the collective interest of buyers of Group Housing Project 'Purab Premium Apartments', Sector 88, Sahibzada Ajit Singh Nagar, Mohali, Punjab ("the project").
- ii. In December 2011, the Opposite Party announced a scheme to develop a group housing project under the name 'Purab Premium Apartments' in Sector 88, Mohali, Punjab. The applications were invited from the public at large for three types of apartments, having super area of 1095, 1571 and 2221 sq. ft. The cost of apartments in the project ranges from Rs.37.00 Lakhs to Rs.69.00 Lakhs.
- iii. Opposite Party in its brochure assured the Applicants that the possession of the apartments will be handed over in 36 months from the date of draw, i.e. by March, 2015. Pursuant to accepting earnest money from the Applicants, the Opposite Party issued Letters of Intent (LOI) to successful applicants which reiterated the essential terms mentioned in the brochure, the Opposite Party has now failed to fulfil its promise of delivering timely possession of quality homes to allottees.
- iv. In the brochure, the OP claimed that the project will have features such as secure gated environment, adequate sports facilities, indoor all weather swimming pools, club, 24 hour power backup, piped LPG/NPG, Elevators, Quality Construction by Firms of Repute using premium branded materials, etc.
- v. The present Complaint is being filed on behalf of members of the Complainant society, who have booked apartments in the project. The members of the Complainant association, who are party to these proceedings are "consumers" within the meaning of Section 2(d) of the Consumer Protection Act, 1986. The grievances sought to be addressed in the present complaint are common to all the members represented herein. The Terms & Conditions governing the allotment of all the members are identical and the promised date of possession has expired for all the members. All the concerned members are aggrieved by the 'unfair' terms of the "Allotment letter and Offer of Possession" sent by the OP. The concerned members therefore have a common cause and interest against the OP.

- vi. The OP is a State Development Authority, which works in various regions of Punjab.
- vii. Although timely payment by the allottees is made an essential condition in the terms provided in the brochure, timely delivery of possession and adherence with the quality specifications provided in the brochure has not been given any significance by the OP. While the delay in payment by the allottees attracts 18% interest, in event that there is a delay in delivery by the OP, it claims liability only to the extent of refunding the amount deposited by the allottees along with the interest at the rate of 8% interest. The brochure does not prescribe any rate of compensation for allottees who wish to take possession of their apartments despite delay in delivery (provided adequate compensation is paid to him).
- viii. OP has offered no reasonable justification for the delay in handing over possession of the apartments and none of the circumstances resulting in this delay were beyond its control.
- ix. The OP had either collected 95% of consideration of the apartments from allottees within 60 days of issuing the Letter of Intent (Plan A) or collected the consideration in six half yearly instalments from the date of issue of LOI, along with interest @ 12% per annum (Plan B). Although the OP collected funds from the allottees, the same were not applied for development of the project till 18 months from the draw, i.e. September, 2013. The construction of the project itself started in September, 2013.
- x. OP has now offered possession of uninhabitable apartments to them.
- xi. In June, 2016, after a delay of over 15 months from the promised date of possession, the OP issued letters captioned as “Allotment Letter & Offer of Possession”. Contrary to bringing an end to the misery of the allottees, this letter only increased the problems for the allottees.

5. Opposite Party in their written statement/reply stated that:

- i. There is no deficiency in service and unfair trade practice on the part of Opposite Party. The Complaint involves disputed and complicated questions of fact and law, which cannot be adjudicated in a summary manner by this Hon’ble Commission. As per the “Dispute Resolution” clause of the Letters of Intent issued, all disputes and / or difference which may arise in any manner touching or concerning this allotment shall be referred to the Sole Arbitrator i.e. Chief Administrator, (GMADA) or any person appointed / nominated by him in this behalf.

- ii. Apart from the other basic amenities like sewerage; electric infrastructure, roads, etc., inter alia the facilities have been provided by the Opposite Party in consonance with the terms and conditions of the Brochure.
 - iii. In spite of the Opposite Party's diligent efforts to complete the development works before 23.05.2015 (36 months from the date of issuance of the Letters of Intent issued in the year 2012) the possession of the Apartments after completion of the development works could be offered to the allottees only with effect from June 2016. The said period was bonafide taken in completing the development works expeditiously and without negligence.
 - iv. The Opposite Party had initially proposed to build a total of 4500 flats under the relevant scheme. After the Draw of Lots was held, many of the applicants surrendered the apartments and around 1400 successful applicants were issued Letters of Intent in the year 2012. Accordingly, the Opposite Party proposed to build only about 1620 apartments. However during the execution of the project, approximately 400 allottees defaulted in making due installments. Thereafter, the numbering draw was held on 05.01.2016 & 06.01.2016 for allotment of apartments to 1075 eligible applicants and approximately 75 allottees opted for refund of their money. This necessitated making the requisite adjustments and planning to ensure optimum utilization of the public funds available for the execution of the scheme. Despite the Opposite Party making utmost efforts, the entire process of completion of the requisite formalities to provide for the situation where the number of allottees had got reduced in the aforesaid manner as also other factors like more than the expected time taken in getting the concerned public authority to remove the high tension wire passing through the site of the project, delayed the project by about 13 -14 months.
6. Heard learned Counsel of both sides. Contentions/pleas of the parties on the various issues related in the Complaint, based on their Complaint/Reply, Rejoinder, Evidence, Written Arguments and Oral Arguments advanced during the hearing are summed up as follows.
7. During the oral hearing(s), the Complainants confined their arguments and pressed for following reliefs:
- (i) Delay compensation.
 - ii. Non-provision of promised amenities.
 - iii. Increase in super area/ reduction in covered area.
 - iv. Demand for maintenance charge and corpus towards welfare society.
 - v. Non-execution of conveyance deeds.

Each of these issues are briefly discussed as follows.

8. Delay in handing over the possession of the Apartments – Possession/Offer of Possession without valid completion certificate/ Delay Compensation

8.1 Complainants have contended that as per brochure the committed date of possession was March 2015, 36 months from the date of draw, which took place on March, 2015. However, as per Letters of Intent (LOI) issued during May, 2015, the committed date of possession was changed to May, 2015 (36 months from date of Letter of LOI). The Opposite Party issued letter captioned as “Allotment Letter and Offer of Possession” (**hereinafter referred to as ‘Allotment Letter’**) during June 2016, i.e. after a delay of over 15 months from the committed date as per brochure. Complainant further contended that the said allotment letter cum offer of possession instead of bringing an end to the misery of allottees increased their problem on account of various counts. Opposite Party is liable to pay delay compensation to the allottees from the committed date till the date of completion certificate.

8.2 Opposite Party on the other hand argued that time was not the essence of the contract, the allottees had an option to withdraw from the project if it was not completed within 36 weeks from the date of issuance of LOI, since the allottees elected not to withdraw after 36 months, they, by their conduct, acted in a manner where time was not the essence of the contract. Relying on a judgment of **Chand Rani Vs. Kamal Rani** (1993) 1 SCC 519, Opposite Party argued that there is no presumption as to time being essence of the contract in case of sale of immovable property. Completion Certificate was issued certifying that works were completed on 30.06.2016 and possession was offered from June 2016 onwards. If possession is offered after obtaining OC, then home buyers are obligated to take possession. Interest, if any to be awarded should be only from 36 months from date of LOI i.e. 21.05.2015 and not from the date of draw i.e. 21.03.2015 as terms of LOI prevail over brochure. Responding to contentions of OP that it being a Government Authority is not liable to pay delay compensation as it has carried out construction under self-financing scheme on ‘No profit No loss’ basis using the amounts paid by the allottees of the project, the Complainant argued that observations of the Hon’ble Supreme Court, **“Bangalore Development Authority Versus Syndicate Bank** (2007) 6 SCC 711 will not be applicable on the facts of instant complaint as time was the essence to complete the construction and hand over the possession within 36 months from the date of LOI. Timely payments was an essential condition in LOI and for delay in payments OP claimed 18% interest, where delay is upto 12 months, but on the other hand OP is claiming that time was not the essence for completing construction.

8.3 It was held by 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, *“failure of the developer to comply with the contractual obligation to provide the flat to a flat purchaser within the contractually stipulated period, amount to deficiency”*. It was held by Hon’ble Supreme Court in **Bangalore Development Authority Vs Syndicate Bank** (2007) 6 SCC 711 and **Fortune Infrastructure Vs Trevor D' Lima** (2018) 5 SCC 422 *“Home buyers cannot be made to wait for position of the flat for indefinite period”*.

8.4 The Complainant also argued that the so called possession letter was not a valid possession letter as it was issued without requisite completion certificate (CC). To this, the OP responded that CC was issued certifying that works were completed on 30.06.2016. OP also argued that obligation to obtain CC upon a builder or promoter of a real estate project from the 'competent authority' is set out in Section 14 of Punjab Apartment and Property Regulation Act, 1995, (PAPRA). Section 2(y) and (i) of the said Act define 'promoter' and 'competent authority'. In the instant case GMADA (OP) is both the promoter of the project as well as Competent Authority for the purpose of ensuring compliance under PAPRA. As per Section 44 of PAPRA, subject to provisions of Section 32, nothing in this Act shall apply if the promoter is a local authority or statutory body constituted for the development of land or housing. Opposite Party being a statutory body is exempted from complying with provisions of PAPRA, including Section 14.

8.5 As regards CC, the Complainant argued that while no Occupation Certificate (OC) has been issued, the sham/fallacious Completion Certificate (CC) filed by Opposite party has not been signed by the appropriate authority and hence is not a valid CC. As per Government of Punjab Gazette notification dated 02.09.2014, competent authority for issuance of CC/partial CC is Chief Administrator or Additional Chief Administrator of concerned Development Authority. The CC dated 05.07.2018 issued by Superintended Engineer claimed to be issued on the basis of Certificate issued by Divisional Engineer (CII), Divisional Engineer (PH-II) and Divisional Engineer (Elec.) has no mention of Architect Report, which is a prerequisite as per provisions of Punjab Regional and Town Planning and Development Act, 1995 and Rules framed therein under which the said CC is claimed to be issued. The said CC does not even remotely indicate the status of development works undertaken. As per gazette notification, the promoter has to submit application to the Competent Authority on the prescribed proforma which discloses the complete information as regards development works undertaken, including the mandatory certificate like Fire NOC, Environment, Pollution Clearance, NOC from Ministry of Defence, etc. Relying on judgment of Hon'ble Supreme Court in **Samriddhi Co-operative Housing Society Vs. Mumbai Mahalaxmi Construction Private Limited** (2022) 2 S.C.R. 376, the Complainant argued that failure of the builder to obtain the OC is deficiency in service for which builder is liable to pay compensation to the allottee.

8.6 We have carefully gone through the provisions of various Acts and Gazette notification and judgments of Hon'ble Supreme Court cited, as well as rival contentions of the Parties. We do not agree with the contention of Opposite Party that time is/was not the essence of LOI despite it stating that possession shall be delivered within 36 months from the date of LOI. If this argument is accepted, no developer will take the proposed/committed timelines for completion of the project seriously and will make the allottees wait endlessly with no liability. This will go against the observation of the 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 that failure of developers to comply with the contractual obligation to provide flat to a flat purchases within the contractually stipulated period amount to deficiency. In fact existence of a clause in LOI, which gives option to the allottee to opt out of the project and claim refund of amount with 8% interests and without any penalty, itself shows that time frame committed for delivery of possession was an essential element of commitment on the part of Opposite Party. Hence it would be wrong to interpret that for delivery of possession time was not the essence. We do not find much substance in the argument of the Opposite Party that Complainant by not opting out of the project in case of delay have by their conduct, acted in a manner where time was not the essence of the contract. Such LOIs/Allotment Letters/buyer's agreements are generally standard documents with set terms and conditions framed by the Developer/promoter and the allottees generally have no discretion to modify any of these clauses. It would be unreasonable to expect allottee to compulsorily either opt out in case of delay or forgo their legitimate rights for compensation for delays. Having booked apartments, paid huge sums and waited for a long construction period, it is

not easy for any allottee to simply opt out **312** cases of delay. Such allottees have legitimate right to stay put in the project and still claim compensation for the delay unless such delays are due to force majeure reasons. In **DLF Home Developers Ltd and Anr vs Capital Greens Flat Buyers Association and Ors** (2021) 5 SCC 537 Hon'ble Supreme Court held that *"the fact that the developer offered an exit option with interest @9% would not disentitle the flat purchasers from claiming compensation"*.

8.7 Further, even if in the present case OP has dual role, both as competent authority as well as developer/promoter, it was under obligation to perform both the roles strictly as per the provisions of various Acts and Rules. Being a statutory authority does not give any immunity to OP while performing the role as developer/promoter to ignore the statutory provisions, and not observing in true spirit, as it as a competent authority would expect the private developers/ promoters to observe. In fact being a statutory/Government body, it is expected to set an example for private developers/promoters by demonstrating complete compliance of provisions expected from any developer/promoter. Hence, Opposite Party as Developer/Promoter should have subjected itself to same process of compliance for issuance of OC/CC as required from any other private developer/promoter. A bare perusal of initial CC issued by Divisional Engineers shows that it does not bear any date, was not issued by the competent authority, as per laid down process and was possibly not existing at the time of issuance of Allotment Letter during 2016, and was got issued subsequently to cover up the lacuna on the part of OP. Even the subsequent certificate dated 05.07.2018 issued by Superintendent Engineer is not the certificate issued by prescribed competent authority, as per prescribed procedure and in the prescribed format.

8.8 Hence, we are of the opinion that the issuance of Allotment Letter to allottees during June 2016 was without a valid OC/CC. Hence, Complainant are justified in their contentions that the allottees are entitled to delay compensation from the Opposite Party from the committed date of possession as per LOI till the date of obtaining valid OC/CC or Offer of possession with valid OC/CC, whichever is later.

8.9 Even if it is assumed that in view of Section 44, the provisions of PAPRA are not applicable to Opposite Party and consequently the guidelines / procedure contained in notification dated 02.09.2014, which pertains to issuance of completion/Partial Completion Certificate for PAPRA and Mega projects falling outside Municipal limits, we are of the view that principle of natural justice demand that nobody should be the judge of his own cause. Hence in a situation where Opposite Party, being public/statutory is performing two roles, one as Competent Authority and other as promoter of a project, it should as a promoter subject itself to same onerous test(s), if not more, to which it puts other private developers/promoters, and as competent authority it should scrutinize its own works as promoter with same level of diligence, and rigour if not more, as it subjects the works of other private developers/promoters so that confidence of allottees in such public/statutory/state authorities remains intact and the allottees are not made to suffer or pay more on account of inefficiencies or negligence of officials of such public/statutory authorities. Hence, even if Opposite Party feels that provisions relating to obtaining of CC/OC, etc. under PAPRA are not applicable to it, in the interest of justice and as a Citizen Centric Welfare Authority, it should, in the absence of any other laid down guidelines/Rules, etc., objectively and in a transparent manner, broadly observe such norms/principles/ process for issuance of CC for its own projects with a view to maintain confidence of allottee in such public/statutory authority.

8.10 It was held by the Hon'ble Supreme Court in **Ghaziabad Development Authority Vs. Balbir Singh** (2004) 5 SCC 65 *"The Consumer Protection Act, 1986 has a wide reach and the*

313

Commission has jurisdiction even in cases of service rendered by statutory and public authorities. Such authorities become liable to compensate for misfeasance in public office i.e. an act which is oppressive or capricious or arbitrary or negligent provided loss or injury is suffered by a citizen. The Commission/Forum must determine that such sufferance is due to mala fide or capricious or oppressive act. It can then determine the amount for which the authority is liable to compensate the consumer for his sufferance due to misfeasance in public office by the officers. Such compensation is for vindicating the strength of the law. It acts as a check on arbitrary and capricious exercise of power. It helps in curing social evil. It will hopefully result in improving the work culture and in changing the outlook of the officer/public servant. No authority can arrogate to itself the power to act in a manner which is arbitrary. Matters which require immediate attention should not be allowed to linger on. The consumer must not be made to run from pillar to post. Where there has been capricious or arbitrary or negligent exercise or non-exercise of power by an officer of the authority, the Commission/Forum has a statutory obligation to award compensation. If the Commission/Forum is satisfied that a complainant is entitled to compensation for loss or injury or for harassment or mental agony or oppression, then after recording a finding it must direct the authority to pay compensation, and also direct recovery from those found responsible for such unpardonable behaviour. Where there is a specific finding of misfeasance in public office, compensation for mental agony can be granted.”

8.11 However, considering that Opposite Party is a Government / Statutory body and the present project was the 1st one and till date the only one where Opposite Party has donned two roles viz that of ‘Competent Authority’ as well as ‘Developer/Promoter’ and the Opposite Party has produced two certificate issued by its team of technical officers showing completion of works at the time of issuance of Allotment Letter, we do not wish to direct the payment of delay compensation beyond date of Allotment Letter provided the Opposite Party in its role as developer/promoter obtains, within 45 days of this order, the prescribed OC/CC under the signature of competent authority by following the due process as is prescribed for any other developer/promoter, broadly on the lines of provisions under the Act/Rules, which should show that all the works in the project, including those in the individual Apartments, as well as common facilities/amenities/infrastructure works in the entire project area were complete in all respects as per the approved scope of works and the project was complete in all respects as per the scope and specifications given in the brochure and /or LOI, and approved plans as on the date of issuance of Allotment Letter in June 2016. However, in case such certificate to be issued by prescribed competent authority show that all such works were completed on a date subsequent to the issuance of Allotment Letter, then the allottees will be entitled to claim delay compensation up to that date and Opposite Party shall be liable for the same.

9. Unsubstantiated claim of increase in super area.

9.1 Complainant stated that Opposite Party has claimed in the Allotment Letter that ‘As intimated by the Engineering Department GMADA (OP), the actual super area of the flat has increased. The decision whether the enhancement in price due to this is to be charged or not will be taken later on. Complainant further stated that Opposite Party has not provided any details/calculations to substantiate the alleged increase in common area which brought an increase in “Super Area” of the Apartments. Opposite Party scaled down the project from constructing 4500 apartments to 1620 apartments and accordingly, the amenities promised in the brochure were also reduced as admitted by the Opposite Party. Super area of the apartment cannot increase and on the contrary would have decreased. Brochure provides that super area of the apartment will be 115% of the covered area of the apartment (including servant quarters) and the covered area of the apartment has in fact decreased as mentioned by Opposite Party in the Allotment Letter.

9.2 Opposite Party in its Written Statement dated 19.12.2016 has stated that super area at the site has been increased due to construction having been raised as per approved drawings. While addressing this concern of the allottees that whether the price of increased super area is to be charged or not, a committee has been formed and after the receipt of report from the committee, the action shall be taken accordingly. Opposite Party contends that in support of this relief, no document has been placed on record to show that any such demand has been made by Opposite Party till date and from which members of Complainant Society. Complainant cannot seek reliefs in anticipation of any possible future demands. Opposite Party further contends that no detail is furnished by the Complainant to show any reduction in covered / super built up area of the apartment.

9.3 We have carefully gone through the rival contentions of parties and the related documents. In any construction project like this, one of the important concern of allottees is the extent of covered / super area as originally promised, area actually offered and area being charged. Super area is the sum of covered area plus the common areas, as defined/detailed by the project authorities. While it is possible for the allottees to objectively get the covered area of their apartment measured, the same is not possible about the common areas share being added to each apartment. Hence the allottees generally remain apprehensive whether they have been correctly charged for the super area which a developer/promoter claims to have provided to each allottee. In such a situation, in the interest of fairness and transparency, it becomes desirable for any developer/promoter, more so when such developer/promoter happens to be a public/statutory authority like the Opposite Party in the present case, that on completion of the project the developer notifies in a transparent way, sufficient details of break-up of the super area into (a) Covered area (b) Common areas/facilities/amenities coverable in the super area as per project document, as well as item wise details/areas of such common areas/facilities/amenities, etc. This will not only help the allottees in satisfying themselves about the correctness of such declared details by getting these verified through Competent Engineers/Architecture/Experts, but were also ensure that developer/promoter charge the allottees of a project only for an area which has been actually provided to them.

9.4 With reference to Opposite Party's contention that a committee has been formed to address the concern of allottees with respect to charges for the increased area, and that action shall be taken on receipt of report of the committee, it is important to note that this Committee was formed more than 6 years ago, and till the date of final hearing on 21st February, 2023, Opposite Party has not provided any updated status on this, whether the report of said committee has been received and whether any decision has been taken by the competent authority of Opposite Party on increase in super area/charging for such increase. Allottee cannot be made to remain under mental strain of sword of any likely increase on this count hanging on their head for such a long period.

9.5 We have gone through the scheme brochure of the project as per which scheme opened on December 12, 2011 and closed on January 12, 2012. The brochure gives a detailed breakup of apartment areas of all the Types, i.e. covered area of apartment, balcony, servant area, etc. and separately covered area of the underground car parking as well as total covered area including car parking etc. Relevant extract of which is given below:-

315 (Area Units sq.ft.)							
Sr.No.	Type	No. of Units	Price per Unit (Rs. Lakhs)	Covered Area (Covered area of Apartment+ Covered Area of Servant Quarter+ Covered area of Balconies of Apartment & Servant Quarter	Super Area (@115% of covered Areas)	Covered Area of underground parking	Total Area (Super Area) including car parking
1.	Type 3	1800.	69.	1931.	2221.	690.	2911.
2.	Type 2	1800.	55.	1366.	1571.	690.	2261.
3.	Type 1	900.	37.	953.	1095.	345.	1440.

A perusal of the brochure shows that Super Area is 115% of the covered area, (excluding covered area of the car parking(s). It also clarifies that super area accounts for areas under covered passage, common stairs, lifts and common facilities such as club and sports.

9.6 We have also gone through one of the Letter of Intent (LOI) issued to the allottees during May 2012. The tentative price of apartment mentioned in LOI is same as in the brochure (Rs.69 lakhs for Type 3 Apartment) with clause for liability to pay 'additional cost' due to increase in construction cost beyond estimated or increase in rate of applicable taxes or enhancement of compensation for land acquisition, etc. Two payment plans were offered to the allottees. As per LOI, the possession shall be handed over after completion of development works in a period of 36 months from the date of issuance of LOI.

9.7 We have also perused three Allotment Letters, one for each type of flat (Type 1, Type 2, Type 3) covered in the two Consumer Complaints, a brief extract of relevant para of these is given below.

Allotment Letter issued to Ms. Kanchan Chauhan (CC/1278/2016)

Flat Area						
Type	Unit	Covered Area	Common area	Common Stairs	Car Parking Area	Total Area (Super Area including Car Parking)
Type 3	sq.ft.	1904. 67	457. 25	81. 23	690.	3133. 15

Allotment Letter issued to Mr. Kapil Naing (CC/1634/2018)

Flat Area						
Type	Unit	Covered Area	Common area	Common Stairs	Car Parking Area	Total Area (Super Area including Car Parking)
Type 2	Sq.ft.	1353. 56	433. 69	85. 93	690.	2563. 19

Allotment Letter issued to Mr. Jarnail Singh (CC/1634/2018)

Flat Area						
Type	Unit	Covered Area	Common area	Common Stairs	Car Parking Area	Total Area (Super Area including Car Parking)
Type 1	Sq.ft.	953. 77	374. 16	74. 39	345.	1747. 32

9.8 A perusal of area related details given in the preceding paras show that:

- (a) There is a reduction in covered area as per Allotment Letter from the one mentioned in the Brochure (reduction of 26.33 sq.ft. for Type 3 flats, 12.44 sq.ft. for Type 2 flats and 0.77 sq.ft. for Type 3 flats).
- (b) Parking area remains same as per Brochure as well as Allotment Letter.
- (c) There is an increase in the total area (super area) including car parking as per Allotment Letter from the one mentioned in the Brochure (increase of 222.15 sq.ft. for Type 3 flats, 302.19 sq.ft. for Type 2 flats and 307.32 for Type 1 flats).

317

(d) If covered area as mentioned in the Allotment Letter is taken into account and total area (super area), excluding car parking, is calculated by following the principle of 115% of covered area, then as per Allotment Letter excess super area is seen mentioned for all the types (252.78 sq.ft. for Type 3 flats, 316.59 sq.ft. for Type 2 flats and 305.49 sq.ft. for Type 1 flats).

9.9 The complainants have also contended that when project size was 4500 flats, the land area was 137 acres (as stated by OP in the written arguments), but for 1620 flats, it came down to 37 acres only. As the proportionate reduction in land is more than the flats, the super area cannot increase, rather has decreased. Hence the contention of complainants that covered area has actually reduced and there is unsubstantiated increase in super area beyond 115% of covered area (excluding car parking) which is not as per brochure appears valid. Clause 8 of the allotment letter states that *“As intimated by the Engineering Department, GMADA that the actual super area of the flat has been increased. The decision whether the enhancement in price due to this is to be charged or not, will be taken later on”*. So far even after a gap of about 7 years, Opposite Party has not taken a firm decision on the above clause 8. Hence, we are of the view that Opposite Party is not entitled to charge any enhanced price on account of increase in super area beyond 115 % of covered area of the flat (excluding car parking) as mentioned in the Allotment Letter even if it claims that super area has increased on account of increase in common area. Strictly speaking, if the covered area have decreased from the one promised as per brochure, as is the case, the concerned allottees are entitled to get a corresponding relief in terms of proportionate reduction in the price. However, considering that price has not been defined per sq. ft., and there is a provision for enhancement in price, etc. as stated above, and Opposite Party claims increased common areas and consequently increased super area beyond 115% of covered area, and keeping in view contention of Opposite Party that it is a Government/Statutory body and has carried out construction under self-financing scheme on ‘No profit no loss’ basis using the amounts paid by the allottees of the project, we are not inclined to give any relief to Complainant or direction to Opposite Party for any refund on account of such reduction in covered area.

9.10 At the same time, we are of the view that, Opposite Party is not entitled to charge the allottees for any super area which is beyond 115% of covered area as per Allotment Letter plus car parking area. Hence, no enhanced price can be charged to the allottees in terms of clause 8 of the Allotment Letter.

9.11 However, we would like to clarify that if any case the total area (super area) by calculating it at 115% of covered area, excluding car parking, actually given to any allottees as per Allotment Letter has actually increased as against such total area (super area) for that type of flat as mentioned in the brochure, the Opposite Party will be entitled to charge enhanced price for such increase after giving a detailed break up/calculation and criteria for calculation of such increase to the concerned allottees.

10. Inadequate Common facilities in the project

10.1 Complainant alleged that as per Allotment Letter, the possession was offered on ‘as is where is basis’ and the allottees shall not be entitled to claim any rebate or refund on any ground whatsoever. Complainant argued that as per brochure and LOI the OP was liable to handover the possession of flats complete in all respects after completion of development works at site, but the OP has failed to fulfill its

318 obligations in this regard. Opposite Party has stated in the written submissions that the project in question is the first and only project involving construction of residential flats/units by Opposite Party (GMADA) till date. The initial proposal was to build 4500 flats in an area of 137 acres but keeping in view the limited resource, the proposal was revised to build 1620 flats in 37 acres. Several applicants surrendered, hence only 1400 successful applicants were issued LOI in May 2012, 400 allottees defaulted, approximately 75-100 allottees opted for refund, till date 192 allottees have been given refund, allotment done in 2016 to 1075 eligible allottees. As on date 789 allottees have taken possession (636 as per written statement), as on date, 176 conveyance deeds have been executed.

10.2 Complainant states that Opposite Party made promises (in the brochure) to provide facilities such as 3 all-weather indoor swimming pools, 8 lawn tennis courts, 2 skating rinks, 8 indoor badminton courts and 8 table tennis tables, 25000 sq. ft. gyms, 8 basketball courts, 8 volley ball courts, 2 football grounds, over one mile walking tracks, a community centre club, yoga and meditation hall with 3000 sq. ft. covered area and convenient shopping for day to day needs within 15 minutes walking distance of every apartment, but these facilities are nowhere to be seen on the project site.

10.3 The Opposite Party in their Written Statement/Evidence/ Written Arguments and during the oral arguments stated that following Facilities have been provided in the project area:

- a. Community centre which includes club, yoga and meditation hall.
- b. Basket ball courts – 2
- c) Volley ball courts – 2
- d) Indoor badminton courts – 2
- e) Football ground
- f) Lawn Tennis court
- g) Table Tennis Tables (no. not mentioned)
- h) Swimming pool
- i) Skating Rink and so on (listing various other facilities provided).

10.4 It is to be noted that quantum of facilities promised in the brochure were in the backdrop of project plan for 4500 flats in 137 acres (as stated by OP in the written arguments), which due to poor response got shelved to 1620 flats in 37 acres. The no. of flats got reduced by 64% but the land area got reduced by 73%. Hence, proportionately, each allottees got a lesser area of either covered area or common facilities/ areas or super area or both. Hence, the concern of allottee as to how the super area of the allottees could have increased when reduction in the land area is more than the reduction in the number of apartments constructed. It may be noted that as per brochure, for 4500 proposed units, there were promises of 8 (eight) lawn tennis/courts, indoor badminton courts, basket ball courts and volley ball court each. The number of flats got reduced to about a one third but the OP admits having provided only one lawn tennis court (against 8 promised) and two basketball courts and volleyball courts and indoor badminton courts

each (against promised of 8 each). Hence, the Complainant argued that these facilities have been reduced in a higher proportion than the corresponding reduction in the number of flats.

10.5 Opposite Party also stated that community centre at the site comprises approx. 64000 sq. ft. area, which included club, yoga and meditation Hall. Regarding walking track, Opposite Party admits it is yet to be constructed, booths have already been constructed. Opposite Party's reply is silent on the two 5000 sq. ft. Gyms promised in the brochure. Although we agree that in the situation of reduction in the project size from 4500 flats to 1620 flats, it may not be feasible for Opposite Party to reduce the common amenities like sports facility, etc. exactly in that proportion, reduction in the promised facilities cannot be too disproportionate. To cite one example, against 8 promised lawn tennis courts, only 1 has been provided which is 1/8th reduction against about 1/3rd reduction in the project size in terms of number of flats, which can be construed as deficiency of service. 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 *failure to deliver promised amenities outside the residential complex- amounting to deficiency of service, even when allottees have no right, title or interest therein. 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 chaffDifficulties in determining the measure of compensation cannot however dilute the liability to pay. A developer who 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. Hence, in factoring in compensation which should be provided to the flat buyers --- we would necessarily have to bear this issue in mind.*

10.6 In view of the forgoing discussion, we are of the view that interests of justice would be met if allottees/members of Complainant Association covered in the present Complaints are given a reasonable compensation on account of deficiency in service in terms of provisions of inadequate common facilities in the project.

11. Poor quality of construction/deficiencies in various items/amenities in the apartments

11.1 Although in the complaint, the Complainant raised various concerns in this regards stating that materials used in the construction of Apartments is substandard and not as per specifications mentioned in the brochure, the Complainant also filed a report of an Architect engaged by it giving comparative analysis between the features as promised in the brochure and those actually on site, along with an Affidavit of the Architect which states as follows:

"2. I say that as per instruction received from Mr. S.K. Loona, President of the Complainant society, I visited the Group housing project "Purab Premium Apartments" at Sector 88, Sahibzada Ajit Singh Nagar, Mohali, Punjab- 160055. That upon reaching the premises, I inspected the buildings and apartments in the project for Architectural/structural/workmanship

defects and deviations from the layout plan provided in the brochure, copy of which is annexed herewith as **Annexure A**.

3. I say the contents of my report annexed herewith as **Annexure B** are correct and have been arrived at pursuant to my independent inspection.”

However, the annexed report to the Affidavit neither bears any Annexure number, whether Annexure A or Annexure B, nor the signatures of the Architect. Hence, after hearing the parties, it was decided not to take these reports a record and/or place any reliance on it by Complainant or Opposite Party.

11.2 Although Opposite Party gave detailed response to various allegations raised in the Complainant in this regard, the Complainant during the hearing did not press for any relief under this heading. Hence we have not gone into the merits or otherwise of the rival contentions of parties on this issues.

12. Unlawful demands under maintenance charges, and corpus towards welfare Society

12.1 Complainant contends that Opposite Party has demanded maintenance charges for 3 years @ Rs.1.25 per sq. ft. of covered area and corpus towards welfare society @ 2% of the sale price of the apartment. The Opposite Party has raised these demands without ensuring basic facilities in the project and formation of a welfare society, Opposite Party is not entitled to demand maintenance charges until it procures a valid Occupation Certificate, the Complainant stated that in the Judgment of the Commission in **Madhu Sudhakar Reddy R and Ors. Versus VDB White Field Development Private Limited and Ors.** (CC No. 763 of 2020 decided on 25.01.2022), placing reliance upon **Kamal Kishore and Anr. Versus M/s Supertech Limited** (CC No. 1009 of 2016 decided on 14.03.2017), it was held that the maintenance charges will be payable only from the date possession is offered to the Complainants after obtaining the requisite Occupation Certificate and provided the construction of the Villa complete in respects at that time, even though the allottee(s) have taken the physical possession before obtaining Occupation Certificate. The Opposite Party has argued that maintenance charges are being charged from the date of allotment. Allottees are bound to pay corpus towards welfare society as per brochure.

12.2 A perusal of clause 18 of the Allotment Letter and Offer of Possession show that every allottee is liable to pay maintenance charges for three years @ Rs.1.23 per sq. ft. of super area per month. The relevant clause is reproduced below:

“18 Every allottee shall be liable to pay maintenance charges for three years @ Rs 1.25 per square feet of Super Area per month to the above said society, which would be administered by GMADA through its authorized representative for the initial three years. The payment will be made in favour of GMADA till the above said society formed and will be paid within three months from the date of issue of this letter, otherwise 12% interest along with 10% Penal Interest shall be charged. In addition to this, the allottee shall also be required to contribute 2% of the sale price of the apartment as a corpus in the society before

possession is handed over. Thereafter the society shall be free to draw its budget and take requisite contributions from residents for the upkeep and running of common facilities.”

Further clause 19 & 20 of the Allotment Letter are reproduced below:

“19 Every allottee shall be required to become a member of a welfare society which would be responsible for the administration and management of the property and maintenance and upkeep of the common areas and facilities including outside paint which shall be kept uniform at all times.

20 The society would abide by the provisions of the Punjab Apartment Ownership Act, 1995 with regard to regulation of its affairs.”

LOI issued in May, 2012 contain similar provisions which are reproduced below:

“4. MANAGEMENT & MAINTENANCE OF PROPERTY (Common areas, services etc.)

(I) Before the possession is handed over, every allottee shall be required to become a member of a cooperative society which would be responsible for the administration and management of the property and maintenance and upkeep of the common areas and facilities including outside paint which shall be kept uniform at all times.

(II) Every allottee shall be liable to pay maintenance charges for three years @ Rs.1.25 per square feet of Super Area per month to the above said society, which would be administered by GMADA through its authorized representative for the initial three years.

In addition to this, the allottee shall also be required to contribute 2% of the sale price of the apartment as a corpus in the society before possession is handed over. Thereafter the society shall be free to draw its budget and take requisite contributions from residents for the upkeep and running of common facilities.

(III) The society would abide by the provisions of the Punjab Apartment Ownership Act, 1995 with regard to regulation of its affairs.”

Even the brochure issued in December, 2011 contains ~~322~~ exactly the same provisions as contained in the LOI as cited above.

12.3 In view of above and considering that Complainant have not pressed for the relief under poor quality of construction/deficiencies under various amenities in the apartment and issue relating to inadequate common facilities have been suitably addressed under para 10 of this order, we are of the view that allottees are liable to pay maintenance charges for 3 years @ Rs.1.25 per sq. ft. of super area per month. However, super area for purposes of calculating the amount payable would be calculated as detailed under para 9 of this order i.e. @ 115% of the covered area actually given to the allottees as per allotment letter plus the area of the car park. In addition, the allottees are also liable to pay 2% of sale price of apartment as corpus to the society in accordance with condition of allotment letter.

13. Other issues/contentions raised by the Parties

13.1 No cause of action to sue for the Complainant Association

(a) Opposite Party argued that it has instituted two committees

(i) 'Facility related' to address concerns related to facilities.

(ii) 'Housing related' to coordinate with project manager and check discrepancies in flats, if any.

Discrepancies pointed out in individual apartments were resolved by this Committee. Majority of members of Complainant Association have also taken possession of flats and ought to have approached the above mentioned Committees for rectification works, if any. In view of this, without pursuing any rectification steps though Opposite Party's Committees set up solely for this purpose, the Complainant Association has rushed to this Commission seeking effectively the same relief which the Opposite Party was voluntarily providing on its own and therefore there was no cause of action in favour of the Complainant Association in the instant matter.

(b) We do not find much weight in the above said contentions of Opposite Party. The Consumer Protection Act, 1986 provides for Complainant society to seek relief under the given circumstances. We do not find any valid ground for non-maintainability of Complaint on this ground. At the same time, considering the above submissions of the Opposite Party, we consider it appropriate to instruct Opposite Party to convene regular meetings of above stated two committees constituted by it, preferably atleast once in a quarter, after duly notifying the details of such meetings to enable the allottees to seek redressal of their grievances through the mechanism of above stated two committees.

13.2 There is no "sameness of Interest" among the allottees represented by the Complainant Association

Opposite Party has argued that the principal grievance in the complaint appears to be alleged 'defects', however, it is not discernible if such 'defects' are common to all the members of the Complainant Association. In this regard, it is to be noted that present Complaint is not under Section 12(1)(c) in representative capacity, where, 'sameness of interest' is a pre-requisite. Present complaint is under Section 12(1)(b). hence, there is not much weight in this contention of the Opposite Party.

13.3 Practice of handing over of new documents at the time of final hearing without any supporting pleadings in the complaint should be deprecated as it is in violation of principal of natural justice and offers no real opportunity to a party to constructively respond to such new documents.

(a) Opposite Party objected on Complainant's producing copies of certain documents, which were tender notices for certain works in the project in question issued by the Opposite Party to substantiate/ supplement their pleadings that many works in the said project are still incomplete/not done e.g. one of the documents is a letter dated 11.03.2022 issued to a contractor titled "*ENHANCEMENT in the work of Balance work of 480 number apartments in eight towers and repair of defective work in 342 number apartments of Purab Premium Apartment, Sector 88, S.A.S. Nagar (Civil, P.H., Electrical & Horticulture)*" another was a Tender Notice for certain works in the project in question.

(b) While we agree with the contentions of the Opposite Party in principle, it is to be noted that at times, on account of subsequent developments, the party wishes to produce some critical/important documents having a strong bearing on the case. In such situation, if it is permitted, generally the other side is given a reasonable opportunity to respond to such new documents/developments. In the present case also, although no reliance has been placed on such tender notices produced by Complainant during the hearing, considering that Complainant did not press for its relief under the heading poor quality of construction/ deficiencies in various items/amenities in the apartments, the Opposite Party was permitted to file additional written arguments to respond to such documents, if it is so wished, which it did in terms of filing written submissions dated 03.03.2023 along with few other documents/details. Hence, Opposite Party need not have any apprehensions on this count.

13.4 As regards contentions of OP for Arbitration clause in the LOI, it was held by Hon'ble Supreme Court in **Imperia Structures Ltd Vs Anil Patni and Anr.** (2020)10 SCC 783 "*Remedies under the Consumer Protection Act are in addition to the remedies under special statutes*". In **Emaar MGF Land Ltd Vs Aftab Singh** (2019) 1 CPJ 5 (SC), Hon'ble Supreme Court held "*Arbitration Clause does not exclude the jurisdiction of Consumer Fora*". As regards contentions of OP that complaint involves disputed and complicated question of law, which cannot be adjudicated in a summary manner by this Commission, Hon'ble Supreme Court in Hon'ble Supreme Court in **J.J. Merchant and Ors. Vs. Shrinath Chaturvedi** (2002) 6SC 635 observed/held "*under the Act, for summary or speedy trial, exhaustive procedure in conformity with the principles of natural justice is provided..... the legislature has provided alternative, efficacious, simple, inexpensive and speedy remedy to the consumers and that should not be curtailed on such ground. It would also be totally wrong assumption that because summary trial is provided, justice cannot be done when some questions of facts are required to be dealt with or decided. The Act provides sufficient safeguards.*"

14. For the reasons stated hereinabove, and after ~~324~~ giving a thoughtful consideration to the entire facts and circumstances of the case, various pleas raised by the learned Counsel for the Parties, both the Consumer Complaints viz 1278 of 2016 and CC 1634 of 2018 are, allowed/disposed off with the following directions/reliefs: -

(i) Super area for purposes of charging the allottees/members of the Complainant Association of the project in question shall be calculated as 115% of the actual covered area (excluding car parking) as mentioned in the 'Allotment Letter & Offer of Possession' plus the actual covered area of car parking as per Allotment Letter & Offer of Possession.

(ii) Opposite Party shall not charge any enhanced price on account of increase in super area as per terms and conditions of the 'Allotment Letter and Offer of Possession' from any allottee(s)/members of Complainant Association unless such increased super area has been actually given to such allottee(s) by calculating super area as per principle mentioned under para 14 (i) above.

(iii) Opposite Party shall charge various items like maintenance charges, etc. on the super area calculated as per principles stated under para 14 (i) above only.

(iv) Opposite Party shall, within 45 days of this order, obtain a Completion Certificate (CC) under the signatures of competent authority, duly certifying that all the works/amenities/facilities, in the apartments as well as common areas, as promised in the brochure/LOI have been fully completed as per scope & specifications contained therein as on the date of 'Allotment Letter & Offer of Possession'. Copy of such Completion Certificate shall be supplied to the Complainant Association as well as put on the website of the OP for the benefit of all the allottees/members of Complainant Association.

(v) Opposite Party shall pay compensation for delay in possession from the committed date in the form of simple interest @ 6% per annum on the total amount paid by the allottees/members of Complainant Association from the committed date of possession as per Letter of Intent i.e. 36 months from Letter of Intent till the date of 'Allotment Letter & Offer of Possession', provided the CC issued under para 14 (iv) above certifies that all works/amenities etc. were completed as on date of 'Allotment Letter & Offer of Possession'; In case such certificate contains a date of completion which is subsequent to the date of 'Allotment Letter & Offer of Possession', delay compensation shall be payable upto such date.

(vi) Opposite Party shall pay an amount of Rs.50,000/- as lump sum compensation to each member of Complainant Association/Society on whose behalf the instant complaints have been filed on account of inadequate common facilities in the project.

(vii) Cases where possession has not been still given by OP/taken by any allottees/members of Complainant Association, Opposite Party shall deliver the possession within 60 days of this order subject to completion of requisite formalities and payment of balance amount, if any, by the concerned allottees/members of Complainant Association, within 30 days of the order. Opposite Party shall not levy any penalty for delay in taking possession by the allottee except interest at prescribed rates as per brochure/LOI/'Allotment Letter & Offer of Possession' for the delayed payments, if any.

(viii) Opposite Party shall also execute the conveyance deed in cases where possession has already been given, within 30 days of this order and in other cases within 30 days from the date of

handing over the possession, subject to completion of requisite formalities by the concerned Allottees/members of the Complainant Association.

(ix) Opposite Party shall regularly convene the meetings of two committees (facility related and housing related), preferably atleast once in a quarter, after duly notifying the details of such meetings, which will give opportunity to the allottees to get their grievances amicably resolved through these two committees.

(x) Opposite Party shall pay litigation cost as Rs.25,000/- to the Complainant Society in both the Consumer Complaints.

xi. Payments under these orders to be made within three months.

15. The pending IAs, in any of the Consumer Complaints, if any, also stand disposed off.

.....J
RAM SURAT RAM MAURYA
PRESIDING MEMBER

.....
DR. INDER JIT SINGH
MEMBER

326
NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

MISCELLANEOUS APPLICATION NO. 232 OF 2023
IN
CC/1634/2018

1. PURAB PREMIUM APARTMENT ALLOTTEES
ASSOCIATION
EDUCATION ZONE, SECTOR 77, MOHALI NEAR
DEEP NAGAR, SOHANA, DISTRICT SAS NAGAR,
MOHALI
S.A.S NAGAR
PUNJAB

.....Appellants(s)

Versus

1. GREATER MOHALI AREA DEVELOPMENT
AUTHORITY
PUDA BHAVAN, SECTOR 62, SAS NAGAR, MOHALI
S.A.S NAGAR
PUNJAB

.....Respondent(s)

BEFORE:

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

FOR THE APPELLANT : MR. SAHIL SETHI, ADVOCATE
MS. NIKITA SHARMA, ADVOCATE
MS. ARUSHI MANN, ADVOCATE

FOR THE RESPONDENT : MR. SUSHRUT MEENA, PROXY COUNSEL FOR
MS. ZEHRA KHAN, ADVOCATE

Dated : 07 November 2023

ORDER

DR. INDER JIT SINGH, MEMBER

1. M.A. Nos. 231 and 232 of 2023 have been filed by the Complainant for clarification in the order dated 04.05.2023 passed in Consumer Complaints Nos. CC 1278 of 2016 and CC 1634 of 2014 (common order in both the consumer complaints). The prayers made by the complainants in the miscellaneous applications are as follows:-

327
(i) Allow the instant application and clarify that maintenance charges shall be payable by the consumers who are party to the instant complaint, from the date of 'Allotment letter & Offer of Possession', provided the occupancy and completion certificate issued by competent authority certifies that all works/amenities were completed as on the date of 'Allotment Letter & Offer of Possession'. In case such certificate contains a date of completion which is subsequent to the date of 'Allotment Letter & Offer of Possession', maintenance charges shall be payable from such latter date.

(ii) Allow the instant application and clarify that the Respondent shall not levy any interest and/or penalty for delay in payment of maintenance charges by the concerned consumers;

(iii) Allow the instant application and clarify that maintenance charges proportionate to the area of car parking shall be levied only pursuant to issuance car parking allotment letter and receipt of car parking spaces by the concerned consumers.

2. We have carefully gone through the above prayers of the complainant as well as the impugned order dated 04.05.2023 and heard both sides. The issue relating to maintenance charges have been dealt at length in para 12 of the order dated 04.05.2023. As per provisions of the allotment letter as well as LOI, before the possession is handed over, every allottee is required to become a member of a Society, which would be responsible for the administration and management of the property and maintenance and up-keep of the common areas and facilities and every allottee is liable to pay maintenance charges for three years @Rs.1.25 per sq.ft. of super area per month to the said society, which would be administered by GMADA through its authorized representative for the initial three years. Hence, such maintenance charges are basically linked to the taking over actual physical possession by the allottee. However, if any offer of possession/actual physical possession is given without a valid O.C., such offer of possession/physical possession is not a valid one. Hence, in such situation the maintenance charges are to be payable w.e.f. the date of valid OC/CC, which prima-facie is reflective of the existence of various amenities/facilities as per the approved plans. In view of this, the Miscellaneous Applications in both the Consumer Complaints are allowed with the following clarification:-

Para (i) - it is clarified that the maintenance charges shall be payable by the complainants, from the date of 'Allotment letter & Offer of Possession', provided the occupancy and completion certificate issued by competent authority certifies that all works/amenities were completed as on the date of 'Allotment Letter & Offer of Possession'. In case such certificate contains a date of completion which is subsequent

to the date of 'Allotment Letter ~~328~~ & Offer of Possession', **from such latter date.**

Para (ii)- it is clarified that the OP shall not levy any interest and/or penalty for delay in payment of maintenance charges by the complainants provided such maintenance charges are paid in accordance with the order dated 04.05.2023 read with this order, within one month of this order.

Para (iii)- the maintenance charges proportionate to the area of car parking shall be levied only pursuant to issuance car parking allotment letter and receipt of car parking spaces by the complainants.

3. Both the applications –MA/231/2023 in CC/1278/2016 and MA/232/2023 in CC/1634/2018 stand disposed.

.....J
RAM SURAT RAM MAURYA
PRESIDING MEMBER

.....
DR. INDER JIT SINGH
MEMBER



13-Jun-2024 18:31:09
Sector 88
Sahibzada Ajit Singh Nagar
Ropar Division
Punjab





13-Jun-2024 18:30:46

Sector 88

Sahibzada Ajit Singh Nagar

Ropar Division

Punjab



ਫੋਨ (ਦਫਤਰ) 0175-2301182

ਪੰਜਾਬ ਪ੍ਰਦੂਸ਼ਣ ਰੋਕਥਾਮ ਬੋਰਡ

ਜੇਨਲ ਦਫਤਰ-1, ਵਾਤਾਵਰਣ ਭਵਨ, ਨਾਭਾ ਰੋਡ, ਪਟਿਆਲਾ

ਫੈਕਸ 0175 - 2307717

ਨੰਬਰ

7151

ਮਿਤੀ

2.11.22

REGISTERED

To

The Chief Administrator,
Greater Mohali Area Development Authority (GMADA),
Project: Purab Premium Apartments at Sector-88
PUDA Bhawan, SAS Nagar

Subject: Directions u/s 33-A of the Water (Prevention & Control of Pollution) Act, 1974 in case of developing Type-I, II and III Multistory flats namely Purab Premium Apartments at Sector-88, Mohali

Whereas, it is obligatory on the part of the authority to obtain the consent to establish (NOC) of the Board as required u/s 25 of the Water (Prevention & Control of Pollution) Act, 1974 and u/s 21 of the Air (Prevention & Control of Pollution) Act, 1981, for establishment of the project.

And whereas, it is mandatory on the part of the authority to obtain the consent of the Board to operate an outlet/ plant as required u/s 25 of the Water (Prevention & Control of Pollution) Act, 1974, for discharge of effluents arising from its premises.

And whereas, it is also mandatory on the part of the authority to provide adequate and appropriate effluent treatment facilities, so as to contain the various pollutants within the standards laid down by the Board, in the effluent discharged by the plant or from the project site.

And whereas, the GMADA was earlier granted environmental clearance as required under EIA notification, 2006 vide SEIAA, Punjab letter no. 889-898 dated 14/2/2013 for developing Type-I, Type-II, Type-III Multistory flats namely "Purab Premium Apartments" at Sector-88, Mohali in a total plot area of 117.18 acres and built up area of 10,00,000 Sqm. As per EC, 1080 flats of Type-I, 2520 flats of Type-II and 2760 flats of Type-III will be constructed and total population will be 31800 persons. The total water requirement of the project will be 4770 KLD. Total 3816 KLD wastewater will be generated which will be treated in STP and 3740 KLD of treated waste water after STP will be used for flushing @ 1272 KLD, 1720 KLD into plantation and 748 KLD into sewer (during summer season). 9 DG sets of 1500 KVA and 2 DG sets of 500 KVA are proposed. 9 Rain water harvesting structures are proposed. The total quantity of solid waste @ 11448 kg/day will be segregated at source and sent to MSW management facility at Samgauli, Dera Bassi. The project site was visited by officer of the Board on 31/8/2022 and informed that M/s Deepak Builders (to whom work was given by GMADA for completion of services work). During visit, it was observed as under:

- 1) In the project, construction work of 1620 flats, one community centre, two sports complex, one football ground, one badminton court, 50 SCFs was completed. The 1600 flats were constructed in total 27 towers in 4 blocks A, B, C & D. The towers have B+G+14 floors configuration and occupancy was given to around 750 flats and around 650 families are presently living.
- 2) The GMADA was provided 2 borewell for abstraction of groundwater but no water meter was provided over it.
- 3) Untreated effluent is discharged into GMADA sewer leading to GMADA STP, Sector-83, Mohali (same is under upgradation) in violation of the conditions imposed in the environmental clearance. The treated water is also not recirculated back to the project for use in flushing and plantation purpose.
- 4) No arrangement for in-situ management of bio-degradable solid waste was provided.
- 5) GMADA was not obtained consent to establish (NOC)/ consent to operate as required under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

And whereas, the authority is not complying with the provisions of the Water (Prevention & Control of Pollution) Act, 1974 and as well as operating its plant without obtaining valid consent to operate from the Board, willfully causing water pollution in the vicinity, thus, violating the provisions of the Water (Prevention & Control of Pollution) Act, 1974 intentionally and deliberately. As such, the authority does not comply with the provisions under the Water (Prevention & Control of Pollution) Act, 1974. Therefore, the GMADA was served notice u/s 33-A of the Water (Prevention & Control of Pollution) Act, 1974 vide Board's letter no. 5743-45 dated 27/9/2022 alongwith an opportunity of personal hearing before the Chairman of the Board on 3/10/2022, with the following proposed directions:

- 1) Environmental compensation shall impose as the GMADA authority damaged the environment.

- 2) The project proponent (developed by GMADA) shall stop the construction activities at the site with immediate effect and stop with discharging any effluent/ wastewater into sewer/ inland surface water/ onto land or through any other mode.
- 3) The project proponent (developed by GMADA) shall not allow any new occupancy and shall not allow any new possession in the premises of the project, with immediate effect.
- 4) The Revenue Authorities shall not to register any sale deed related to any plot/ flat/ house/ shop/ any other component of this project with immediate effect.
- 5) The PSPCL authorities shall not release any electric connection for this project or any of its components, with immediate effect.

And whereas, the above said personal hearing was postponed due to administrative reasons and was fixed on 12/10/2022 and same was informed to the authority vide Board's letter no. 6090-91 dated 7/10/2022. The said personal hearing was again postponed to 18/10/2022 due to administrative reasons. The representatives of the GMADA attended the hearing and informed that approx. 600 families are residing at the project site. Further he submitted his reply in writing in which it has been mentioned that the wastewater generated from the project is very less as compared to the wastewater quantities mentioned in the environmental clearance letter i.e. 3816 KLD. The wastewater generated from the project is being treated in GMADA STP of capacity 45 MLD in Sector-83, Mohali. The pipeline networks for tertiary treated water have already been laid in the Purab Premium Apartments. the environmental clearance of the project was granted in the year 2013 and there was no condition of in-situ management of bio-degradable solid waste. The solid waste generated from the project is being segregated and dumped at the MC Mohali dumping ground. The GMADA shall apply for consent to operate for the said project within 15-days. After hearing, the Chairman of the Board decided as under:

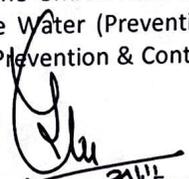
1. The project proponent shall install and commission an STP of adequate capacity for the total generation of sewage/ domestic effluent for the treatment and scientific disposal of the treated effluent from the premises of the said project as proposed at the time of obtaining the environmental clearance, immediately.
2. The GMADA shall apply for consent to operate as required under the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 within 7-days.
3. The GMADA shall comply with the Solid Waste Management Rules, 2016 for management and disposal of its solid waste.
4. Directions u/s 33-A of the Water (Prevention & Control of Pollution) Act, 1974 be issued to stop the further construction activities in the said project.
5. A demi official may be written to the Chief Administrator, GMADA, SAS Nagar to request the authority to take immediate remedial measures.
6. The Environmental Engineer, Regional Office, SAS Nagar shall visit the site after 7-day to verify construction status of STP and process the consent application to be applied by the GMADA on merits.

And whereas, the proceedings of hearing were conveyed to the GAMDA authorities vide Board's letter no. 7136-37 dated 21/11/2022 for compliance.

Thereafter, in exercise of the powers conferred u/s 33-A of the Water (Prevention & Control of Pollution) Act, 1974, the Board has issued the following directions:

"The GMADA authorities shall immediately stop the further construction activity in the said project. "

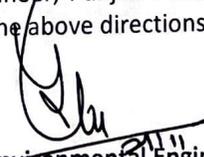
In case of failure to comply with the above said directions, the GMADA and or any other person(s) responsible to comply with the above directions under the Water (Prevention & Control of Pollution) Act, 1974 shall be liable for action u/s 41 of the Water (Prevention & Control of Pollution) Act, 1974.

ok

 Sr. Environmental Engineer
 for and on behalf of the
 Punjab Pollution Control Board

Dated 21.11.22

Endst. no. 7152

A copy of the above is forwarded to the Environmental Engineer, Punjab Pollution Control Board, Regional Office, SAS Nagar for information and compliance of the above directions.

ok

 Sr. Environmental Engineer
 for and on behalf of the
 Punjab Pollution Control Board

Ongoing Construction on December 13 and 14, 2022





Dec 13, 2022 10:31:15
Sahibzada Ajit Singh Nagar
Punjab



Dec 14, 2022 17:36:08
Sahibzada Ajit Singh Nagar
Punjab

Construction continues on January 21, 2023



Ongoing Construction on January 25, 2023



THIS STORY IS FROM JULY 23, 2023 - THE TIMES OF INDIA

Top official checks water supply issue

TNN / Jul 23, 2023, 08:28 IST

SHARE



Mohali: Mohali chief administrator Rajiv Gupta on Saturday visited Purab Premium Apartments project to check the status of water supply.

He also inspected the Water Treatment Plant at Sinhpur.

To check the status of water supply in the apartments, Gupta visited the project site. On enquiring, the engineering wing told him that the water supply to the project had been disrupted due to some technical snag which now had been restored.

To this, Gupta instructed the team of engineers to keep regular check of equipments in use and also ordered to replace the obsolete machinery so that there is no repeat of such incidents in future and occupants do not suffer. TNN

<https://timesofindia.indiatimes.com/city/chandigarh/top-official-checks-water-supply-issue/articleshow/102049094.cms>

ENGLISHHINDI FRIDAY, JULY 21, 2023

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Punjab

NO WATER SUPPLY IN WHOLE PURAB PREMIUM APARTMENTS SOCIETY FOR THE LAST TWO DAYS

July 21, 2023 11:49 AM

Face2News/Mohali

No water supply in whole purab premium apartments society of Sector 88, Mohali for the last two days in such a hot and humid weather, said Rahul Sharma, General Secretary of Purab Premium Apartments JAN-HIT Bachao Committee.

In a tweet to CM Bhagwant Singh Mann and Deputy Commissioner has resented and apprised the whole matter. Mr. Rahul Sharma demanded to restore the supply in said apartment without delay.

No water tankers were provided by the Gmada, added Rahul Sharma.

He said, GMADA must supply drinking water 20 litres water for each family twice a day else STOP SELLING these flats without water like basic amenities and promised amenities.

He also reminded Mr Ajoy Sinha to suspend the concerned persons responsible for scarcity of water in said apartment.

<https://www.face2news.com/news/88131-no-water-supply-in-whole-purab-premium-apartments-society-for-the-last-two-days.aspx>



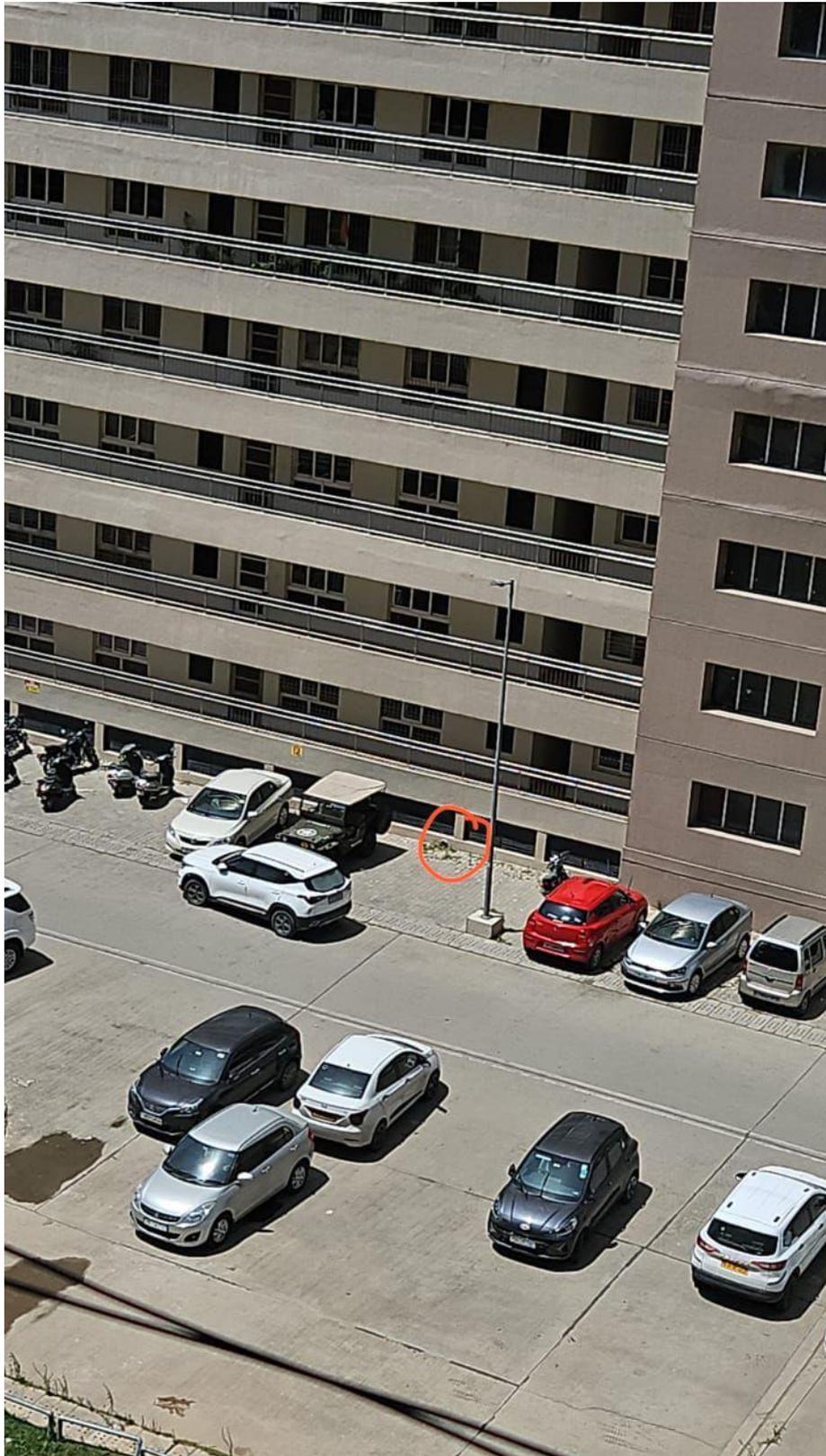
06-Jun-2024 10:50:06

Sector 88

Sahibzada Ajit Singh Nagar

Ropar Division

Punjab







19-Jun-2024 13:50:01

344



345





12-Jun-2024 16:14:52
Sector 88
Sahibzada Ajit Singh Nagar
Ropar Division
Punjab



12-Jun-2024 16:14:56
Sector 88
Sahibzada Ajit Singh Nagar
Ropar Division
Punjab