NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 344 OF 2013

1. NITIN AGARWAL & ANR.,
2104, Springs, G. D. Ambekar Marg, Naigaon, Dadar (E),
MUMBAI - 400014. .....Complainant(s)

Versus

1. M/S THE BOMBAY DYEING & MANUFACTURING CO. LTD. & 2 ORS.,
Bombay Dyeing, Neville House, J. N. Heredia Marg, Ballard Estate,
MUMBAI - 400001.
2. MR. JEH N. WADIA, MANAGING DIRECTOR,
Bombay Dyeing, Neville House, J. N. Heredia Marg, Ballard Estate,
MUMBAI - 400001.
3. MR. DURGESH MEHTA,
Bombay Dyeing, Neville House, J. N. Heredia Marg, Ballard Estate,
MUMBAI - 400001. .....Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA,PRESIDING MEMBER
HON'BLE BHARATKUMAR PANDYA,MEMBER

FOR THE COMPLAINANT : MR. RAJEEV M. ROY, ADVOCATE

FOR THE OPP. PARTY : MR. NARENDRA HOODA, SR. ADVOCATE
MR. RITU RAJ, ADVOCATE
MR. SNEHIL SRIVASTAVA, ADVOCATE
MR. PRAKASH CHANDRA, ADVOCATE
MS. SEEMA SUNDD, ADVOCATE

Dated : 12 July 2024

ORDER

1. Heard Mr. Rajeev M. Roy, Advocate, for the complainants and Mr. Narendra Hooda, Sr. Advocate assisted by Mr. Ritu Raj, Advocate, for the opposite party.

2. Nitin Agarwal and Mrs. Nikita Agarwal have filed above complaint, for directing the opposite party to (i) pay Rs.21915561/- as delay compensation for delay in handing over possession from 01.01.2009 to 28.01.2012; (ii) refund Rs.794957/- with interest @18% per annum from the date of deposit till the date of refund, charged for excess carpet area; (iii) refund Rs.57/- lacs, with interest @18% per annum from the date of deposit till the date of refund, charged for car parking; (iv) refund Rs.200000/- and Rs.200000/- with interest @18% per annum from the date of deposit till the date of refund, charged as club house maintenance and club house membership; (v) refund excess amount, charged as MVAT; (vi)

provide correct accounts and refund excess amount paid by them; (vii) provide a basketball court, badminton court, 3 rooms for various recreational purpose, rooms for activities, leisure and recreation such as gymnasium, spa etc. to be housed in main building itself and the 2 floors on which these facilities were to be housed; (viii) submit yearly audited account to the society relating to the maintenance and not to realize maintenance till submitting audited account; (ix) pay Rs.1000000/- as compensation for expenses incurred in communication on telephone, legal notice, mental agony and harassment; (x) pay Rs.200000/-, as litigation costs; and (xii) any other relief which is deemed proper in the fact of the case.

3. The complainants stated that The Bombay Dyeing & Manufacturing Company Limited (the OP) was a company, registered under the Companies Act, 1866 and its Real Estate Division was engaged in the business of development and construction of group housing projects. Jeh N. Wadia (OP-2) was its Managing Director and Durgesh Mehta (OP-3) was its Joint Managing Director. The OP launched a very elite high standard premium residential project of 38 storied tower in the name of "Springs I", at Spring Mills, Dadar (East), Mumbai in 2006 and wrote an invitation letter dated 25.09.2006 to the complainants, considering them to be the cream de la cream of Mumbai for purchasing the flat. The brochure of the OPs represented as 'The first golden rays of dawn, Sing nature's pleasing song, turn into mother nature's speech and enjoy recreation within. Spring is brought to you by the Wadia Group responsible for landmarks such as Samudra Mahal, Beach Tower and Twin Towers. It is built with the hallmark value of trust and integrity that have delighted customers for walkover a hundred fifty years. Sun deck was displayed prominently in the brochure. As per plan to be approved was a "Wrap-around Sun Deck", a special feature, lending character and built to the apartment besides balcony for sun bathing. The OP gave an invitation letter dated 25.09.2006 to the complainants for booking a flat in the project. In the invitation letter, the OP mentioned 'Fitted with imported modular kitchen', 'Italian marble/wooden flooring', 'Ready to use wardrobe in every bedroom and walk-in wardrobe in master bedroom', Rain shower and a 2 person Jacuzzi tub in every master bedroom bathroom', All sanitary, electrical and light fittings of high end or reputed imported brands in every flat and premium quality finishes in every flat'. In brochure, additional amenities of a basketball court, badminton court, 3 rooms for various recreational purpose, rooms for activities, leisure and recreation such as gymnasium, spa etc. to be housed in main building itself and the 2 floors on which these facilities were to be housed, natural land escaped garden and matured trees, jogging track, the building of 34 floor etc. were promised. At the time of booking during negotiation, sun deck area was presented as a private sit-out area of the flat owners. High class amenities and facilities mentioned and the class of construction as represented with time bound schedule of payment and assured possession, virtually lured the complainants, who booked the flat and deposited 10% of BSP as booking amount on 26.09.2006. The OPs, issued Confirmation of Offer letter dated 26.09.2006 allotting a 4BHK+ on 23rd floor and total 3 parking. As per demand of the OP, vide letter dated 21.01.2007, the complainants further deposited 10% of BSP. The OP issued a letter dated 22.03.2007 (received on 24.03.2008), calling upon the complainants to sign the agreement. In the agreement, some specifications as mentioned in the brochure and invitation letter were varied. As the complainants had already deposited 20% BSP as such under the threat of forfeiture of 20% earnest money, the complainants were compelled to sign the agreement. The OP executed agreement for sale dated 23.05.2008 of Flat Nos.2104-A (carpet area 872.31 sq.ft.), 2104-B (carpet area 802.89) and 2104-C (carpet area 725.49 sq.ft), for consideration of

Rs.42005656/-. The agreement contained payment plan as “construction linked payment plan”. Later on the complainants noticed that some of the clauses of the agreement were contrary to the brochure and the provisions of Maharashtra Ownership of Flats (Regulation of Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA), particularly MOFA does not permit the builder to allot and sell the car parking space separately, which is required to be provided as per Development Control Regulations. The complainants received an email dated 05.09.2008, demanding Rs.11/- lacs to Rs.19/- lacs towards car parking although at the time of booking the price of car parking was informed as Rs.5/- lacs to Rs.7/- lacs. The OP charged Rs.57/- lacs for three car parking spaces and a separate agreement for sale was executed on 21.11.2009 in respect of Parking Nos.G-56, G-57 and F-60, contrary to the provisions of MOFA and DC Regulations. In clause-18 of the agreement provided December, 2008, as due date for possession. The OPs vide letters dated 19.07.2008, unilaterally shifted date of possession as July, 2009. Again vide letter 08.10.2009 assured for handing over possession till November, 2009, however delivery of possession was further delayed. The complainants and other allottees, vide letter dated 29.08.2011, raised their various grievances and requested to fix a meeting with the Chairman of the OP. The OP, vide letter dated 30.09.2011, gave some explanation for delay and informed that “occupation certificate” had been obtained. The OP obtained “part-occupation certificate” on 09.09.2011, offered possession vide email dated 05.10.2011 and handed over possession on 28.01.2012. As per clause-18 of the agreement, due date of possession was December, 2008 as such the complainants are entitled for delay compensation from January, 2009 till 28.01.2012, in the form of interest @18% per annum on their deposit as for delay in payment of instalment, the OP used to charge interest @18% per annum. The OP collected two years advance maintenance charges starting from 01.11.2011 at the time of handing over possession but in spite of repeated demand, the OP is not providing audited account relating to expenses incurred in maintenance. The OPs have collected an amount of Rs.200000/- as club house membership charges and Rs.200000/- as club house maintenance at the time of handing over possession, although it was stated that club facility would be provided to the owners of the flats. The OP collected Rs.200900/- as Corpus, which was not indicated at the time of booking. At the time of booking carpet area was of 4BHK (grand) was informed as 2447 sq.ft. and saleable area as 3256 sq.ft. but actual carpet area is 2400.69 sq.ft. and the OP has realized excess money for 46.31 sq.ft., The complainants are entitled for refund of these amounts including the amount of car parking along with interest @18% per annum. Clause-h of the Possession Certificate prevented to enter and use sun-deck area although 3 top floors of the building are retained by the OP and they are using sun-deck area of these floors. Common amenities and facilities as promised in the brochure have neither been developed nor provided. The OP did not provide a basketball court, badminton court, 3 rooms for various recreational purpose, rooms for activities, leisure and recreation such as gymnasium, spa etc. to be housed in main building itself on 2 floors but these facilities were to be housed in a separate building eating the open area and 2 floors but these facilities were sold to the buyers, natural land escaped garden and matured trees, jogging track were not provided. As per BMC norms, the OP has to provide car parking for the guest but no car parking for guest has been provided. Out of 4 passenger lifts, one lift is reserved for the Managing Director of the OP although its cost and maintenance are shared by the flat owners. The OP utilised free FSI for constructing Club Building but its ownership has been retained by them. The building of 34 floors was promised but 41 floors have been constructed. The OP did not inform that the MVAT would be charged in addition to the consideration. At the time of taking

possession, the OP gave two options i.e. (i) to provide bank 'fixed deposit' of 1% of total consideration with lien to him and indemnify with lien on the flat for further 4% or (ii) provide 5% 'fixed deposit' with lien to him. The OP used to demand MVAT and took 'Fixed Deposit' from the complainants by way of security to be utilized for MVAT. When the association of the builders lost their case in Bombay High Court, challenging MVAT, Maharashtra Government issued a notification, requiring the registered dealers to deposit MVAT till 31.10.2012 without penalty. The OP gave an email to pay MVAT as per third option of the notification. In October, 2012 without giving details of MVAT payable by the complainants, the OPs liquidated 'Fixed Deposit'. The OPs are further threatening to charge interest on it. The OP has neither formed flat owners cooperative housing society nor transferred the ownership of the land and building to the society. The complainants sent a notice dated 13.02.2012, raising their grievance against above illegal acts of the OP which was replied by them through letter dated 22.03.2012, denying all the allegation. On these allegations, the complaint has been filed on 28.10.2013.

4. The opposite parties filed written reply, in which, booking of the flat on 25.09.2006, allotment of Flat No.2104, execution of agreement for sale dated 23.05.2008 of the Flat Nos.2104-A (carpet area 872.31 sq.ft.), 2104-B (carpet area 802.89) and 2104-C (carpet area 725.49 sq.ft), for consideration of Rs.42005656/- and agreement for sale dated 21.11.2009 for car parking spaces No.G-56, G-57 & F-60, have not been disputed. The OP stated that it was constructing "Springs-I" on its factory land. Initially statutory authorities delayed grant of necessary permission, which was duly informed to the complainants vide letter dated 20.02.2009. The Government of Maharashtra set up a Monitoring Committee to oversee the approvals of redevelopment of all the mills land in the state. In early, 2009, the Monitoring Committee issued notice to 'stop work' of the project as they had sought for a clarification from the Government as to whether the OP is raising construction within permissible limit as per law. The OPs challenged the notice to 'stop work' in High Court and obtained a stay order. Then the Monitoring Committee instigated the ex-workers of the mill for agitation. In spite of payment of all the dues to the ex-workers started agitation. Due to which Municipal Corporation of Greater Mumbai issued notice to 'stop work' in February, 2009. The OP challenged the notice to 'stop work' in High Court and obtained a stay order on 19.04.2010. Then the construction was started again. The delay was caused due to force majeure reasons and the OP was entitled for extension of the period for handing over possession under Clause-18 of the agreement. The OP through letter dated 30.09.2011, informed the complainants in this respect. The OP throughout gave updates of the construction vide letter dated 19.07.2008, 20.02.2009, 22.07.2009, 08.10.2009, 04.01.2010 and emails dated 25.06.2011, 08.09.2011 and 30.09.2011. Under Clause-18 of the agreement, the complainants had liberty to get their money refunded with interest @9% per annum in case of delay in possession but they did not exercise their right for refund and waited for possession. As such they cannot claim delay compensation. The construction was completed and the OP applied for issue of "part-occupation certificate", which was issued on 09.09.2011, possession was offered vide email dated 05.10.2011 and the complainants took possession on 28.01.2012. At the time of taking possession, the complainants inspected the flat and recorded their satisfaction in respect of the workmanship, quality, finishing of the apartment and working of the fixtures, fittings and amenities provided therein. Possession Certificate was signed on 28.01.2012. After two years of offer of possession, they cannot be permitted to raise issue of deficiency in service. The allegation that the complainants were coerced to take possession

and sign possession certificate has been denied. The OP never promised for user of sun-deck and dry area, which cannot be permitted against the conditions of the sanctioned plan. It has been denied that the OP were using sun-deck area of the flats in its possession. The complainants and other flat owners have already approached Deputy Registrar for formation of the flat-owner's cooperative housing society. Deputy Registrar, who is appropriate statutory authority for such issue, took cognizance of the application of the complainants and other flat owners. Invitation letter dated 25.09.2006 was issued to the persons, who had displayed extra-ordinary interest in "Springs-I". Issue of invitation letter to the complainants does not mean that they were lured for booking the flat. The car parking is constructed in a separate building and the complainants were fully informed that car parking was chargeable separately in the invitation letter itself and they entered into an agreement for sale dated 21.11.2009. They cannot challenge the agreement after such as long time. It has been denied that any term and condition of the agreements is contrary to the provisions of Development Control Regulation, 1991 or MOFA or invitation letter. Maharashtra Value Added Tax was applied on the developers w.e.f. 20.06.2006. The developers challenged it before Bombay High Court but could not succeed. Thereafter, the Commissioner issued Circular No. 14T of 2012, directing the developers to get registration and pay MVAT, along with interest till 31.12.2012, giving three options. Although the developers challenged the order of High Court in Supreme Court but pending decision, the OP opted for third option and paid MVAT, which was informed to the complainants, vide email dated 20.10.2012. The complainants were again informed that their liability for MVAT on the flat and for car parking was 5% of the value of both the agreements and their liability was Rs.2385283/-. The complainants were called upon to inspect all the papers in respect of MVAT through email dated 06.11.2012 and pay balance amount of MVAT but they did not turn up. By liquidating their fixed deposit with 'Yes Bank' of Rs.477057/-, part of MVAT was paid. It has been denied that 'fixed deposit' with 'Indusind Bank' was en-cashed. Although in invitation letter, approximate carpet area of 4BHK+ was mentioned as 2447 sq.ft. but in the agreement for sale dated 23.05.2009 carpet area has been mentioned as 2400.69 sq. ft. and sale price was mentioned as Rs.42005656/-. This area is excluding sun-deck area attached to the flat of the complainants. The OP replied all the queries of the complainants time to time. Club facility and its membership was not part of the amenities as promised. The OP registered Deed of Declaration dated 28.09.2011 with the statutory authority. The agreement for sale dated 23.05.2008 provides "construction linked payment plan" but the complainants always delayed payment of the instalments in spite of raising demand. As per clause-60 of the agreement for sale dated 23.05.2008, the terms of the agreement is binding upon the parties and not anything mentioned in the brochure. Invitation Letter dated 25.09.2006 specifically stated that the items in the list of recreational facilities proposed with regard to the Club House were merely illustrative and the items in the list could undergo changes. It has been denied that the OP realized Rs.2/- crores toward club charges. Under the agreement, the complainants were required to pay Rs.200000/- as Corpus fund and Rs.900/- as share money, which was deposited on 20.10.2011. The OP, vide letter dated 05.09.2008, informed the complainants about the price of car parking. Recital 'D' and clause-14 of the agreement dated 23.05.2008 clearly mentioned that would be ground + at least 41 upper floors more particularly described in Second Schedule. It has been denied that the OP ever informed that price of the car parking would be Rs.5/- lacs to Rs.7/- lac. Payment of the price of car parking was made long back and this issue cannot be raised. There was no deficiency in service on the part of the OP. Preliminary issues i.e. (i) the agreement contained an

arbitration clause as such the complaint is liable to be dismissed, (ii) Various reliefs claimed in the complaint can only be granted by civil court, (iii) Jeh N. Wadia, Managing Director and Durgesh Mehta, Joint Managing Director have been wrongly impleaded in the complaint although there was no privity of contract with them, (iv) Possession was offered on 05.10.2011 and the complaint has been filed on 28.10.2013, Section 24-A of the Consumer Protection Act, 1986 provides that 2 years limitation for filing of the complaint, the complaint is time barred and is liable to be dismissed, are raised.

5. The complainants filed Rejoinder Affidavit of Evidence of Nitin Agarwal and documentary evidence. The opposite parties filed Affidavit of Evidence of Mr. S. Raja and documentary evidence. The opposite parties filed Additional Documentary Evidence through IA/14874/2023. Both the parties have filed their short synopsis of arguments and summary of arguments.

6. We have considered the arguments of the counsel for the parties and examined the record. Section 24-A of the Consumer Protection Act, 1986 provides two years limitation from the date of cause of action for filing the complaint. Cause of action arose on 05.10.2011 i.e. the date of offer of possession with final demand, as such, various reliefs claimed in the complaint filed on 28.10.2013, are time barred. Right to claim delay compensation arose on 05.10.2011, as in final demand, delay compensation was not provided/adjusted. The complainants deposited the amounts of final demand on 20.10.2011, without any protest. The argument of the complainants that the cause of action for claim of delay compensation and refund of excess amount deposited arose on 28.01.2012, when possession was taken, is not liable to be accepted. The claim of delay compensation and refund excess amount are time barred. Supreme Court in **State Bank of India Vs. B.S. Agriculture Industries, (2009) 5 SCC 121,** held that cause of action, i.e. the date of incident was starting point of limitation and in absence of an application for condonation of delay in filing the complaint, it was liable to be dismissed as time barred.

7. The complainants signed Final Inspection Letter and Possession Certificate on 28.01.2012. The principle of waiver will also apply against the complainants. Supreme Court in **Kalpraj Dharamshi v. Kotak Investment Advisors Ltd., (2021) 10 SCC 401,** held that for constituting acquiescence or waiver it must be established, that though a party knows the material facts and is conscious of his legal rights in a given matter, but fails to assert its rights at the earliest possible opportunity, it creates an effective bar of waiver against him. Whereas, acquiescence would be a conduct where a party is sitting by, when another is invading his rights. The acquiescence must be such as to lead to the inference of a licence sufficient to create a new right in the defendant. Waiver is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, benefit, claim or privilege. It is an agreement not to assert a right.

8. The OP was constructing “Springs-I” on its factory land. The Government of Maharashtra set up a Monitoring Committee to oversee the approvals of redevelopment of all the mills land in the state. In early, 2009, the Monitoring Committee issued notice to ‘stop work’ of the project as they had sought for a clarification from the Government as to whether OP-1 was raising construction within permissible limit as per law. The OPs challenged the notice to ‘stop work’ in High Court and obtained a stay order. Then the Monitoring Committee instigated the ex-workers of the mill for agitation. Due to which Municipal

Corporation of Greater Mumbai issued notice to 'stop work' in February, 2009. The OPs challenged the notice to 'stop work' in High Court and obtained a stay order on 19.04.2010. Then the construction was started again. The OPs vide letters dated 21.04.2010 and 11.10.2010, informed the complainants about the 'stop orders', stopping the construction on the site. Delay was caused due to force majeure reasons and the OPs were entitled for extension of the period for handing over possession under clause-18 of the agreement. The complainants delayed payments of the instalments, however due to 'stop work' notices, the OPs waived substantial amount of interest. Supreme Court in **Dhanrajmal Govindram Vs. Shyamji Kalidas, AIR 1961 SC 1285**, held that an analysis of the rulings on the subject shows that where reference is made to "force majeure" the intension is to save the performing party from the consequences of anything over which he had no control.

9. The complainants entered into a separate agreement for sale of car parking spaces on 21.11.2009. In clause-4 of this agreement, it has been mentioned that Larger Property was CS Nos.223, 120, 1/983 and 1/128 (part) of Dadar Naigaon Division, G.D. Ambekar Marg admeasuring 184658.43 square meters. "Springs-I" was being constructed on C.S. No.223 (part) admeasuring 1088 square meters. The builder was in process of constructing on a portion of the Larger Property adjacent to the said residential block, a car parking block, consisting of three basement levels, ground level and at least one upper floor for the benefits of the buyers of residential and commercial unit. The complainants were desirous to purchase three car parking bearing Nos.G-56, G-57 & F-60.

From the agreement for sale dated 21.11.2009, it is proved that the car parking was not constructed in common area of "Springs-I" rather it was a separate building. The complainants knowingly and voluntarily purchased three car parking spaces in this building. Case law of Supreme Court in **Nanakchand Laloochand Pvt. Ltd. Vs. Panchali Cooperative Housing Society Limited, (2010) 9 SCC 536** has no application in the present case.

10. On the basis of brochure, the counsel for the complainants argued that 'sunken deck' was a private sit-out area of the flat owner. This was a special feature, which lured the complainants for purchasing the flat. In Possession Certificate on 28.01.2012, the OP restricted its private use. According to the OPs, 'sunken deck' was constructed on every floor of the building but its user is not permitted in the sanctioned layout plan, as such, in Annexure-VIII of the agreement dated 21.11.2009 'Drying Balcony' was noted as "Limited Common Area and Facility". In view of clause 60 of the agreement, the agreement will prevail over the brochure. Its user cannot be permitted against the terms and conditions of the sanctioned layout plan.

The "Springs-I" is a 41 storied building, if user of 'sunken deck' was prohibited in sanctioned layout plan for the safety of the residents, its user cannot be claimed. Out of 143 of total flat owners, only two flat owners have consumer complaints claiming right to use 'sunken deck' area.

11. Clause-28 of the agreement dated 21.11.2009 provides for construction of Club House with various facilities for use and benefit of the flat owners. The flat owners are required to pay Rs.200000/- and Rs.900/- as share money for use of the Club House its facilities. They further agreed to pay entrance fee, membership fee and other charges. Clause 42.4 of the

agreement provides for 'Corpus Fund'. In final demand Rs.212100/- was demanded as club facilities maintenance charge and Rs.200000/- as 'Corpus Fund'. The demands are as per agreement.

12. The complainants have claimed for refund of money which has been realized by the opposite parties by liquidating their "Fixed Deposit" for payment of MVAT. Clause-23 of the agreement provides for payment of all the taxes charged by the local authority, state government and central government. Clauses-30 & 31 of the agreement provides for payment of taxes etc. levied in future by the local authority, state government and central government. The opposite parties stated that Maharashtra Value Added Tax was applied on the developers w.e.f. 20.06.2006. The developers challenged it before Bombay High Court but could not succeed. Thereafter, the Commissioner issued Circular No. 14T of 2012, directing the developers to get registration and pay MVAT, along with interest till 31.12.2012, giving three options. Although the developers challenged the order of High Court in Supreme Court but pending decision, the OPs opted for third option and which was informed to the complainants, vide email dated 20.10.2012. The complainants were again informed that their liability for MVAT on the flat and for car parking was 5% of the value of both the agreements and their liability was Rs.2385283/-. The complainants were called upon to inspect all the papers in respect of MVAT through email dated 06.11.2012 and pay balance amount of MVAT but they did not turn up. By liquidating their fixed deposit with 'Yes Bank' of Rs.477057/-, part of MVAT was paid. It has been denied that 'fixed deposit' with 'Indusind Bank' was en-cashed. During arguments the counsel for the OP supplied a calculation chart relating to MVAT payable by the complainants according to which some was still payable by the complainants. The complainants could not show any illegality in it.

13. The complainants claimed for refund of Rs.794957/-, charged for excess area. Although in invitation letter, approximate carpet area of 4BHK+ was mentioned as 2447 sq.ft. but in the agreement for sale dated 23.05.2009 carpet area has been mentioned as 2400.69 sq. ft. and sale price was mentioned as Rs.42005656/-. As such, it cannot be said that any excess amount was realized by the OP.

14. The complainants have claimed for submitting audited annual accounts relating to outgoing incurred by the opposite parties. Clause-23 of the agreement requires the flat buyers to pay estimated outgoing of 24 months at the time of taking possession. In final demand, the opposite parties charged Rs.575700/- in the head of maintenance/ monthly outgoings including municipal tax for 24 months. The balance amount, if any, has to be paid to the flat owners cooperative housing society, who will have right to demand audited account and balance amount and not individual flat owners.

15. The complainants and other flat owners have already approached Deputy Registrar for formation of the flat-owner's cooperative housing society. Deputy Registrar, who is appropriate statutory authority for such issue, took cognizance of the application of the complainants and other flat owners. As such no relief is required to be granted in this complaint, in this respect.

16. In the list of the relief, the complainants asked for various amenities like basketball court, badminton court, 2 additional rooms for recreational purpose, gymnasium and spa. Out of above amenities, in the brochure the opposite party has promised spa, gymnasium, half

basketball court and badminton court, therefore, it is bound to provide these facilities to the buyers. Supreme Court in **Wg.Cdr. Arifur Rahman Khan Vs. DLF Southern Homes Pvt. Ltd., (2020) 16 SCC 512,** held that the builder is bound to provide the facilities as promised by it.

O R D E R

In the result, the complaint is partly allowed. The opposite party is directed to provide spa, gymnasium, half basketball court and badminton court as promised in the brochure, within a period of six months from the date of the judgment.

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

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BHARATKUMAR PANDYA
MEMBER