

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION
UTTAR PRADESH
CONSUMER COMPLAINT NO. SC/9/CC/25/2025**

.....Complainant(s)

Versus

.....Opposite Party(s)

BEFORE:

HON'BLE MR. SUSHIL KUMAR , JUDICIAL MEMBER

FOR THE COMPLAINANT:

SMT. PREMA SINHA W/o. SHRI H.C. SINHA, In-Person

FOR THE OPPOSITE PARTY:

EXPERION DEVELOPERS PVT LTD, In-Person

DATED: 23/05/2025

ORDER

Reserved

State Consumer Disputes Redressal Commission

U.P., Lucknow.

Complaint No.25 of 2025

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Versus

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Present:-

Hon'ble Mr. Sushil Kumar, Officiating President.

Hon'ble Smt. Sudha Upadhyay, Member

Sri Manu Dixit, Advocate for complainants.

Sri Prashant Kumar, Advocate for opposite parties no.1 & 2.

Sri Shreyas Kumar Agarwal, Advocate for opposite party no.4.

Date 23.5.2025

JUDGMENT

Per Mr. Sushil Kumar, Officiating President: This complaint has been filed against the opposite parties for a direction not to make alteration and deviation in the project against the sanctioned lay-out plan, direction to the opposite parties to provide adequate compensation for mental and physical agony Rs.5,00,000.00, for unfair trade practice Rs.5,00,000.00, for unfair trade contract Rs.5,00,000.00 and also seeks further direction to pay Rs.1,25,000.00 as litigation cost from the

opposite parties.

As per the case of the complainants, a project in the name and style of Experion Capital was launched by the opposite parties no.1 & 2. The project was advertised as a new ultra luxurious project loaded with all modern facilities and services. The complainants inspected the documents i.e. map bearing permit no.41210 approved by the Lucknow Development Authority on 11.1.2017 which is annexure no.2 to the complaint, environment clearance (annexure 8 to the complaint) dated 12.12.2017, Fire NOC dated 2.10.2021 which was issued for residential purposes (annexure 7 to the complaint).

Agreement for sale was executed between the parties on 5.5.2022 (annexure 6 to the complaint). Clause B and D of the agreement runs as under:

“Clause B: “The said land is earmarked for the purposes of developing a mixed-use project (hereinafter referred to as “Experion Capital”) comprising of (1) residential apartments in a group housing complex comprising of multi storeyed apartments buildings along with other infrastructure and amenities as prescribed under the applicable laws (hereinafter referred to as the “Project”) and (ii) commercial complex consisting of shops and office spaces.

Clause D: The Lucknow Development Authority has granted the commencement certificate to develop the project vide building plans approval dated 12.01.2017 and build to permit no.41210. The promoter has also obtained Environment Clearance from the Ministry of Environment and Forest (MOEF) vide memo No.30/Parya/SEAC/ 3723/2016 dated 12.12.2017. The promoter agrees and undertakes that it shall not make any changes to the approved building plans except in strict compliance with the applicable laws.”

It is further stated that commercial complex consisting of shops and offices is an individual project and has nothing to do with club area which exclusively meant for the residents of the society. There are two distinct sections in mixed used land with a distinguished boundary wall between the residential apartment alongwith club house. The residential unit and retail building have separate entry and exit gates and different allotted parking spaces and as such, both units are independent and non-interfering with each other. The space dedicated for a double heighted indoor badminton court, dance and aerobics centers as shown in the sanctioned/ approved maps by the Lucknow Development Authority, has been wrongly and illegally leased out by the opposite parties no.1 & 2 for opening a restaurant-cum-bar inside the residential premises which affects peaceful living of the complainants. The complainants have paid a consideration of Rs.1,42,41,689.00, Rs.2,85,000.00 as stamp duty at the time of agreement of sale and Rs.7,02,400.00 as stamp duty at the time of sale-deed. As per clause 12 of sale-deed the vendee acknowledges and confirms that the commercial complex to be developed over the mixed used land and shall not form part of the common area and shall be developed and constructed as an independent standalone project.

The opposite parties no.1 & 2 further encroached over the common area, pathways, area distinguished for fire vehicle entered into a lease agreement for opening a restaurant-cum-bar inside the club house with the opposite party no.3 which is not only in-contravention of the sanctioned lay-out map but is also in violation of the terms of the NOC obtained from the fire department and trying to create fatal threat to the safety of the residents of the residential tower. The complainants mentioned the relevant clauses of lease-deed which annexure 9 of the complaint, is as follows:

“Clause 1: Lessor are the absolute and lawful owner or otherwise authorised of the premises admeasuring 3555.69 square feet (chargeable area of demised premises No.1) located in the ground floor double height unit No.1 (demised premise No.1) along with premises admeasuring 994.25 square feet (chargeable area of demised premises No.2) located in mezzanine area (demises premise no.2) and premises admeasuring 1803.40 square feet (chargeable area of demised premise No.3) located in the ground floor single height unit 2 (demised premises no.3) in total admeasuring around 6353.40 square feet (chargeable area) forming part of the retail building (Retail Building) situated in the mixed use project, Experion Capital, Gomti Nagar, Phase 1, Vibhuti Khand, Lucknow Uttar Pradesh. (Project) as shown in the plan annexed hereto as Annexure 1 and marked in red thereunder.

Clause 2: The Lessee is engaged in the business of setting up and running the restaurant under the brand name “Chien Loco by Sunny Leone” (Business).

Clause 2.1: The Lessee is engaged in the business of setting up and running the restaurant under the brand name “Chica Loca by Sunny Leone” and use the demise premises for lawful purpose i.e. commercial use in the mixed-use project (the permitted use). Lessee shall subject to applicable laws, carry out its permitted use at the demised premises as long as the liability of complying with the terms and conditions of the agreement.....

Clause 7.2. The demised premises don't constitute a part of common areas and/or club area of residential part of the project.

Clause 16.1: Subject to availability the Lessee will have the right to use

car park spaces at the rate of Rs.5000/- plus applicable GST, per car parking space per month (car parking charges) within the said retail building throughout the term....

Clause 16.3: Subject to availability and pay on park basis for each car/two-wheeler, the visitors of Lessee shall be allowed access for parking two-wheeler/four-wheeler car (non-commercial) in the visitor car parking available in the commercial building i.e. Experion.”

With regard to the retail building and not for residential building or the club house meant for exclusive use of the residents. However, the lease is being carried out and the restaurant-cum-bar is being constructed and opened in the club house area at the double heighted premises which was meant for indoor badminton court. Lease agreement dated 7.8.2024 specifically states that parking would be at the retail building and the visitors of lease shall be lessee allowed excess space for parking two wheeler/four wheeler car in the visitor car parking which is in utter violation of section 14 of the RERA Act, 2016 and section 4(4) of the U.P. Apartment Promoters of Construction, Ownership and Maintenance Act, 2010. Without obtaining the mandatory prior consent of the allottees the promoter got the sanctioned lay-out map of the project bearing permit no.MAP 20181011115032947 dated 14.7.2020. This revision of map in 2020 was intentionally concealed by the opposite parties no.1 & 2 and sold the flat in 2022 showing the map sanctioned in 2017 which evident from bare perusal of the clause D of the registered agreement of sale.

It is also stated that as per the rule 5(4) UP Trade and Location of Excise Shop Rules,1968, a liquor shop cannot be opened in the close proximity of a residential place, hospital, school, factory etc. and as such restaurant-cum-bar

namely Chica Loca by Sunny Leone cannot be opened within the residential society.

The opposite parties no.1 & 2 filed written statement and submitted that the flat was allotted to the complainants Smt. Prema Sinha and her husband which was not joined the complaint and the complaint is liable to be dismissed on this very ground.

It will be appropriate to mention at this stage itself that after considering the statement of the Id. counsel appearing for the opposite parties no.1 & 2, it was directed by this bench that the co-allottee be made as complainant or opposite party and in compliance of the order passed by this bench the co-allottee was made as complainant no.2. Therefore, this objection need not to be considered further in this judgment.

The opposite parties no.1 & 2 further stated that the complaint is also liable to be dismissed on the ground of mis-joinder of necessary party Aviyayaya Work Pvt. Ltd. as a party in the consumer complaint. It is further stated that the complainants have approached the Hon'ble High Court and RERA with the same prayer hence, the instant complaint is not maintainable and complainants suppressed with regard to the pendency of other litigations on the same subject matter before the RERA as well as before the Hon'ble High Court, Allahabad at Lucknow bench.

The complainants have no locus-standi to raise allegation qua revision of sanctioned site plan which was done in the year 2020 and this Commission has no jurisdiction to deal with allegations qua revision of plan and this Commission is not empowered to compel a party to provide something which was never

promised. There was no mention with regard to badminton court and as per Lucknow Maha Plan, 2021 which permits the use of a commercial space for running a restaurant. There was no provision of utility shop in the said premises.

It has been stated that the map of 2017 was revised in the year 2020 and the lease is not in-contravention with regard to the map approved by the Lucknow Development Authority. The family restaurant is being opened and not a restaurant-cum-bar as the complainants are trying to mislead the Commission by treating the family restaurant as restaurant-cum-bar. The opposite parties no.1 & 2 have not violated the fire safety rules and regulations or environmental norms. Lease of the demised premises has been executed in favour of Aviyayaya Works Pvt. Ltd. for running family restaurant. The opposite party no.3 is only a registered trade mark. The complaint is barred by estoppel and acquiescence. There is no change in the commercial/club space because of revision in plan 2020. All the constructions and development have been done in accordance with duly sanctioned plan.

It is further stated that neither the building nor the lay-out plan of 2017 gives indication that the space where the restaurant is coming up would be utilized for a double heighted badminton court and aerobics classes. However, in the brochure there is no badminton court or aerobics classes were shown. The area in controversy was always approved as a commercial area. The complaint is barred by limitation. The revision of plan was done in the year 2020 and the complaint is being made in the year 2025.

The opposite party no.3 Chica Loca by Sunny Leone was served through Dasti notice. The opposite party no.3 was represented by their counsel but subsequently, no appearance was made by the opposite party no.3 and no written

statement has been filed.

The opposite party no.4 Lucknow Development Authority stated that the complainants are not their consumer, hence, the complaint is not maintainable against the opposite party no.4.

Having heard the counsel for the parties and with the consent of all the parties, the instant complaint is being finally disposed of.

After having gone through the record and hearing the parties, the first point of issue arises as to whether the opposite parties are deviating from the sanctioned map and opening a bar and restaurant on the residential premises/club house/double heighted indoor badminton court and aerobic center.

On perusal of map of 2017 as well as revised map of 2020, it is evidently clear that the residential complex has a club house area, multi purpose hall, table tennis and snooker room, children play area, squash court, badminton court, dance and aerobic facilities. All these facilities as per the sanctioned and revised plan separates the designated retail/office block which is mean for commercial purposes. In our view the restaurant-cum-bar cannot be opened in the residential part of any project. This bench can take judicial notice of this fact that builders after allotting the residential flats to the allottees and promising the facilities covers the land for commercial purposes in arbitrarily manner.

On perusal of the maps annexed by the complainants and the opposite parties no.1 & 2, it reflects that a mixed project of two different distinguished premises namely residential project for residential tower and a club house for residents of the society and a standalone retail building which is designated for commercial shops and retail office. The maps sanctioned and revised by the

opposite party no.4 clearly indicates that retail building and the residential premise are two separate premises with different parking spaces and free space for moment of fire tenders as per the fire safety guidelines.

On perusal of sanctioned and revised maps, it appears that there is no parking facilities are given inside a retail building but in para 16.1 of lease agreement runs as under:

“16.1 Subject to availability, the Lessee will have the right to use car park spaces at the rate of Rs.5000/- (Rupees Five Thousand Only) plus applicable GST, per car parking space per month (Car Parking Charges) within the said Retail Building throughout the Term. Upon expiry of the 3rd year and 6th year i.e. on 1st day of the 4th and 7th year from the Lease Commencement Date, the Car Parking Charges shall stand escalated by 15% (Fifteen percent) on the previous month Car Parking Charges payable by the Lessee.”

If a restaurant-cum-bar is permitted to run in this area, the residents will face the parking trouble. It is also clear on perusal of fire NOC that it has been given for residential use and not for commercial use and as such, the opening of restaurant-cum-bar will be against the fire safety norms as well. The peaceful living of the residents will be disturbed if any bar is opened in the residential area and it is not permissible to open a bar in the residential area as per the excise policy of the State of U.P. Therefore, opposite parties no.1 & 2 cannot be permitted to give permission to the opposite party no.3 for opening a restaurant-cum-bar within the vicinity of the residential area.

Another question arises as to whether the complaint is time barred ?

As per section 65 of the Consumer Protection Act, 2019, a complaint must

be filed within two years from the date of arising of the cause of action. In the case in hand, the cause of action was not arose on the date of correction of map or allotment of unit to the complainants but the cause of action arises when the opposite parties no.1 & 2 executed a lease-deed in favour of the opposite party no.3 for opening restaurant-cum-bar. Therefore, this complaint is within time limitation.

The third point for determination arises as to whether the complainant suppressed the material fact regarding pendency of lis before RERA and Hon'ble High Court, Allahabad.

The Hon'ble Supreme Court in **Imperia Structure Ltd. vs. Anil Patni and ors., (2020) 10 SCC 783**, has held that remedies under the Consumer Protection Act are in addition to those available under RERA. Furthermore, section 79 of the RERA bars the jurisdiction of Civil Court but does not preclude the Consumer Fora from entertaining the complaints. The Hon'ble Apex Court concluded that home buyers can seek remedies under both statutes.

As per provision of section 100 of the Consumer Protection Act, 2019 this Act shall be in addition to and not in derogation of the provision of any other law for the time being in force. There is no final determination of dispute between the parties of any court or authority. Since the complainants are consumers of the opposite parties no.1 & 2, they are entitled to file a consumer complaint before this Commission.

Another question arises as to whether the complaint is barred by doctrine of estoppels and acquaintance ?

Although the opposite parties pleaded this sentence in their objection but

never mentioned any act of the complainants which leads with estoppels and acquaintance on their part. Therefore, this complaint is not bared as per the doctrine of estoppels and acquaintance.

The Id. counsel for the opposite parties no.1 & 2 pressed one another point that the lease-deed executed in favour of the Aviyayaya Works Pvt. Ltd. is a necessary party. Since the complainants are not consumer of the above mentioned party. The complainants seeking the reliefs against the opposite parties no.1 & 2 for not permitting any person to open a restaurant-cum-bar in the area reserved for the residents of the society including the complainants. Therefore, the lessee Aviyayaya Works Pvt. Ltd. is not a necessary party in this case.

The Hon'ble Supreme Court in its latest judgment Civil Appeal no.9987 of 2024, 2025 INSC 752) defines the "consumerism" as under:-

"Consumerism" is therefore, one of the most integral aspects of human life. How then does one define it? It is indeed a rather difficult task to comprehensively do so, as every act or omission of an individual might attract the definition, given the impact it may have on others.

Consumerism, thus, constitutes the very spirit of the Constitution of India, 1950 (hereinafter referred to as "the Constitution"). It does not end with recognizing and protecting the rights of a consumer vis-a-vis a trader or a service provider, as the case may be, but travels far beyond. The rights of a consumer are not merely constitutional or statutory guarantees, but are in fact, natural, and therefore, inalienable. The fact that the society, economy, polity and the environment, are inseparable from each other, is something that was

envisioned even by the framers of the Constitution.”

The complainants are senior citizens and they have a constitutional right to live peacefully with dignity. This bench can take notice of this fact that where a bar runs, quarrels runs parallel. The complainants, the senior citizens will not be able to face such quarrels in their vicinity.

In view of the discussion made above, the opposite parties no.1 & 2 are liable to restrain from opening/permitting to open any restaurant-cum-bar or commercial establishment inside the residential premises/badminton court area/club house area.

The complainants seek damages of Rs.15,00,000.00 for physical, mental agony, unfair trade practice and unfair trade contract from the opposite parties, but in our view the complainants are not entitled to get damages under these heads. Although, the complainants are entitled to get Rs.50,000.00 as cost of litigation.

ORDER

The complaint is allowed.

The opposite parties no.1 & 2 are hereby restrained from opening/permitting to open any restaurant-cum-bar or commercial establishment inside the residential premises/ badminton court area/club house area.

The opposite parties no.1 & 2 are directed to pay Rs.50,000.00 as cost of litigation within 30 days from the date of judgment to the complainants.

The stenographer is requested to upload this order on the Website of this

Commission today itself.

Certified copy of this judgment be provided to the parties as per rules.

(Sushil Kumar)

(Sudha Upadhyay)

Officiating President

Member

Jafri, PA I

Court No.1

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SUSHIL KUMAR
JUDICIAL MEMBER