LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM
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Submission Cover Sheet

Inquiry into Building Quality in the ACT

Submission Number: 68

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Submission to the Inquiry into building quality in the ACT

This submission addresses the following terms of reference:

> 4. Processes and practices for the identification and rectification of defects including;
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> > (a) Current mechanisms available for defect identification and redress;
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> > (b) The effectiveness of those mechanisms to ensure rectification in instances where standards have not been met;
> >
> > (c) The adequacy and accessibility of those mechanisms especially for individuals or body corporates; and
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> 5. The cost effectiveness of current building compliance and defect rectification practices for industry, government, individuals or body corporates and the potential for the introduction of alternative dispute resolution mechanisms.
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> 8. Personal experiences that could inform consideration of any of the above.

In October, 2016, I entered into a contract to purchase, off the plan, a unit in an apartment complex that was to be built in [redacted]. Construction was completed early in 2018. My settlement occurred in the second half of April, 2018 and I took possession of the apartment shortly thereafter.

I did not purchase the apartment as an investment. I purchased it as a place I could live, in the longer term, owing to gradually declining health but which could be rented until I needed to live there. I was planning to rent it within about six weeks of settlement.

With this in mind, I was attracted to the unit for the following reasons:

(a) Owing to my health issues, a design that offered easy ingress and egress, security, was easy to keep clean and which required little or no maintenance for at least a decade;

(b) A well-built apartment with quality inclusions;

(c) The design offered privacy and independence: I could live without being a burden on others;

(d) The location was close to essential services: transport, supermarket, library, post office. It offered NBN (after a fashion);

(e) The location provided easy ingress into and egress from Canberra – via the airport, rail or via road; and

(f) The central location offered an environment where I could walk and exercise, for instance along the foreshore. The location also provided access to entertainment, whether in the cafes or a short walk to Manuka, where there is a bookshop and a cinema, and a good walk or a short bus or taxi ride to the National Gallery, National Library, or into civic or the ANU, where I could see concerts or other cultural attractions.

The apartment seemed to meet my criteria and so I was prepared to pay a premium for these attributes.

Representations by the developer, builder and architect

The architect, developer and builder claimed that this apartment complex was to be built to a high standard using quality products and inclusions, thereby meeting an important criteria of mine: quality construction and inclusions and a reasonable period of maintenance free living. The developer and builder both presented themselves as experienced and reliable. Therefore, I purchased this apartment in part because of the representations made by the developer, builder and architect. Examples of their representations appear in annexure 1.

Given the statements of the architect, developer, builder, a purchaser would be justified in having certain expectations. These include but are not limited to:

(a) the developer was experienced and oversaw construction to ensure the project was delivered as represented to purchasers;

(b) the builder had appropriate quality controls in place to ensure they delivered as per representations to purchasers;

(c) the architect thought through not only the amenity of the design, but such mundane matters as the size of the laundry cabinet, airflow, air extraction and the position of powerpoints and water outlets;

(d) that upon settlement, the property would be fit for habitation and free from major defects that would prevent occupation and use;

(e) the builder and developer would be proactive and maintain communication with purchasers; and

(f) if there were major defects these would be remedied with alacrity so as to reduce the financial burden on purchasers – or in the case or a rental property, loss; and that rectification would occur as per the sale contract.

I was warned by a number of friends that purchasing an apartment in Canberra was an extremely risky venture and more so for a unit "off the plan". Moreover, as a general rule, and particularly in Canberra, any statement to do with real estate should be approached with extreme caution. Hyperbole is the order of the day and misleading if not actually deceptive and untrue assertions are extremely common.

Therefore, I approached this purchase with extreme caution. When I saw this apartment complex advertised, I researched the architects, developers and the builders. I was not able to find anything derogatory on the public record. I made enquiries of people I know in various professions, for instance the law and building management. These enquiries also revealed nothing derogatory. Additionally, I visited completed developments by the architects, the developer and builder and spoke to residents. Again, nothing derogatory was revealed.

I took possession of my unit in late April. Prior to taking possession, a pre-settlement inspection occurred. I was given just 30 minutes to inspect the apartment. Three members of my family accompanied me. The woman conducting the pre-settlement inspection was aggressive and impatient to the point of being borderline rude. We were bustled through the inspection in a perfunctory and dismissive manner, with a constant commentary minimising our concerns, "Oh, that's not important" – while all the time being told that she – the person conducting the inspection – had many others to do. We were not given the opportunity to adequately check anything: 30 minutes is not nearly enough time to properly conduct such an inspection. Other residents also had the same experience.

After taking possession, I immediately discovered a number of defects. Because I intended, in the short term, to rent the apartment these had to be rectified as soon as possible and prior to leasing. For the most part these defects were the result of poor design, or poor construction, or both.

Most of the defects in construction were relatively minor and the builder fixed them relatively quickly – within four weeks of notification. There was one major defect of construction that has not yet been fixed. This same defect affects over 50 of the apartments in the complex. I detail that below, but first, my expectations.

My expectations prior to settlement

Apart from believing the apartment would be constructed as offered, when I purchased this apartment I anticipated that it would be suitable for renting on the day of settlement and that I would be able to do so within six weeks, given I wanted to install a washer and refrigerator.

I had decided to rent the property with a washing machine and refrigerator because installing and moving such items presents the high likelihood of damage to the apartment when tenants change.

I allowed about four weeks for purchasing and delivery of those items and expected to be able to put the apartment on the rental market in the third week of May. However, the various defects in the apartment I discovered upon taking possession has resulted in it being in a state where I must now rent it at a discount, after incurring losses waiting in vain for the major defect to be rectified.

Major defect … and how it has not been handled.

The major defect is the apartment's floor. It is lifting and buckling. In my apartment, and apparently in almost half the apartments in the complex, the flooring material is exhibiting the same defect.

In my apartment, the flooring material buckled to such an extent near the apartment's entry door that it was extremely difficult to open and close. This was a safety and security issue.

After I complained, the builder caused to be removed some of the scotia and the trim where the floor meets the external hallway carpet and "trimmed" the floor material. See attached photographs. This enables the door to open and close, after a fashion, but looks ugly, because he trim remains removed, the flooring material lifts and the underlying problem has not bee fixed.

The flooring contractor, the flooring manufacturer and the builder have inspected the floor in my apartment multiple times and, I understand from their emails, other apartments too.

The flooring contractor drilled three holes through the flooring into the slab in order to test the moisture content of the slab. See attached photographs. They also drilled tests holes in other apartments and in the corridors too. In my apartment, these holes remain and have not been repaired. See attached photographs. One hole is open; two are covered by yellow tape. As well, some of the scotia has been removed on the wall near the entry door and also along a part of two walls. It has not been replaced.

The flooring contractor also installed equipment in my apartment for a 48 hour period to measure humidity.

The builder conducted their own rounds of humidity tests. Their technician was to test my apartment, but the technician could not find me on the appointed day (although I had been waiting on-site in the apartment for over an hour). On the day, I contacted the builder's office via SMS when I arrived at the apartment to say I was on-site. I messaged the builder to say I was waiting. When the technician could not find me, he did not call the builder's office for my phone number so as to find me. The test was performed in the corridor rather than in my apartment. The failure to meet the technician caused great inconvenience to me because I had to rearrange other of my activities.

Initially I did not understand that this problem was in fact indicative of an issue through my apartment and in fact the building: high moisture content in the concrete slab. I have been told by the builder and flooring contractor that the problem is that the moisture content of the slab was, at the time of floor installation, too high for the flooring material used.

This is not unique to my apartment, but occurs throughout the building. That is to say, the slab has a high moisture content and the flooring material used was unsuitable given the moisture content of the slab. This led to the flooring material absorbing moisture from the slab and swelling and buckling.

In my apartment, according to the technician employed by the flooring contractor, the moisture content of the slab was between 80 and 85 percent. The atmospheric humidity content in the apartment if it has been closed up is between 55 and 65 percent. A couple of levels below the moisture content of the slab was measured to be over 90 percent. I have been told by a person who has seen it, that on the floor above, the moisture content of the slab is so high that moisture is seeping up through floor boards creating beads of black water on the joints in the flooring materials. Why the moisture content of the slab was not tested prior to installation of the flooring material is an interesting question.

Rectification of this defect

I first advised the builder of this problem on 14 May, 2019. The 90 day rectification period expired on or about 15 August. In order that the apartment was available whenever the flooring contractor or the builder wanted access in order to inspect the floor, conduct tests or undertake rectification works, I kept the apartment unoccupied until the first week of December.

However, from May to December, my losses were mounting, reaching about $12,000 as of the end of November. My being available to provide access resulted in my not being able to do other activities that I had long planned (for instance, I had planned to be away August – October).

So, in order to reduce my losses, caused by my waiting for the major defect to be rectified and so I could get on with my life, I was forced to rent the apartment on an "as is basis" at a discount. This results in a loss of rental income.

On going delays

The developer, builder and flooring contractor have known the nature of the problem from, at latest, early June. Even given 2 months of testing and evaluation, they could have commenced work no later than mid September. As of 15.30, 27 November, rectification work has not yet commenced nor has the builder given any indication of when work is likely to commence.

To be sure, the developer, builder and flooring contractor are well aware my apartment was not entirely suitable for occupation, rental and use; and they are aware that this has been the case since 14 May, when I first advised the builder of the problem with the floor.

All parties have been aware from at latest 14 June, that the defect with the floor is causing me financial loss and from 16 October the developer and builder are aware that I consider them to be in breach of the purchase contract. Some of my communications with the developer, builder and flooring contractor are listed in the annexure 2.

On Friday, 19 October at 13.30, I emailed the builder providing them with a quotation for removing the existing flooring and replacing it with material more suitable, given the moisture problem with the slab. The cost a flooring contractor quoted is almost $4000. I also stated that I would, if they did not by 25 October come to an arrangement acceptable to me, go ahead with the rectification and seek to recover the financial losses and costs I have incurred because of their failure to honour the contract with me.

Late in the afternoon on 19 October, I was given a note from the builder sent at 13.43 on 19 October – 13 minutes after I sent my email. The sender stated that the builder and flooring contractor had not reached an agreement about the repair of the floor and that the builder was engaging other expertise. This is unacceptable, given the floor in my apartment has to be replaced, the flooring contractor and builder have damaged the floor in my apartment and have not repaired the damage they did in trying to identify a solution, irrespective of the defectiveness of the entire floor.

On 19 October, I also asked the flooring contractor to repair the floor where they had drilled test holes and also replace the scotia. I have not received any response to that email.

Having heard nothing, on 26 October, I wrote to the developer, pointing out the defect and that the contract had not been honoured. The developer replied saying that the builder said they had replied and to check my spam folder. There I found an email of 24 October from the builder admitting a moisture problem in the slab and stating that the builder "strongly advised against installing replacement floor coverings without seeking professional advice as to the suitability of the floor coverings and any appropriate substrate preparation, particularly in relation to the moisture content of the slab". The builder also said that as an owner, I had an obligation to mitigate any loss I have suffered.

By making the repairs at my cost, minimising my losses is precisely what I was trying to do. And my proposed actions involved obtaining my own moisture tests,and using a flooring product recommended by a professional as being suitable to the conditions in my apartment.

Nevertheless, I gave the builder the benefit of my doubt and accepted their word. I refrained from going ahead and told the builder that for the time being, I would delay implementing my own solution and wished for this matter to be settled by the builder.

On 29 October, the builder sent an email to all affected owners stating that they had "competed their investigations and instructed the flooring contractors to proceed with rectification of all effected floors". The flooring contractor was asked to commence work within 14 days. In terms of the builder's authorisation to the flooring contractor to commence work, nothing happened.

On the same day, I emailed the flooring contractor saying I was keen to have the work done but also, at my expense change the colour of the flooring. I did not receive a reply.

On 16 November, affected owners received an email late in the day from the builder stating that

> [The builder] is currently engaging with the subcontractor which laid the floorcoverings, in order to have them rectify the works. Should the subcontractor not commence such works by Friday 23 November 2018, [the builder] will be taking legal action to enable us to engage an alternative subcontractor as soon as possible.

The builder also stated that:

> Please note that, in order to determine the full scope of the potentially defective floorcoverings, [the builder] intends to engage an expert to inspect the [name removed] Apartments within the coming weeks.

I wrote to the builder on 18 November, seeking clarification. In a reply email to me the next day, the builder, citing the requirements of a contact between them and the flooring contractor, stated that they can only engage a replacement contractor after the flooring contractor has been given an opportunity to rectify the defects. That opportunity expired at CoB, 23 November.

At about 14.30 on Monday, 26 November, I wrote to the builder asking them to tell me what was now going to happen. As of 15.30 on 27 November, I had not received a reply and in fact I have not received any further information from the builder and the defect has not been fixed as at the date of this submission.

The builder's approach is unacceptable. The builder, developer and flooring contractor have known about this defect for over four and a half months. The builder and flooring contractor have conducted multiple tests through the building. They know what is causing the problem. They also know the remedy – and have known this from at least mid September, if not earlier. They do not need to do any more tests on the affected apartments.

As a precaution, the builder does need to test apartments where problems with the flooring are not yet apparent, but which may have been caused by the moisture content of the slab. However, this does not prevent the builder beginning rectification works on those apartments known to have problems with their floor.

The developer and builder are in breach of their contract with me. Yet, the builder has neither proposed a scheme to rectify the defects in the floor nor given timetable been given to me for rectification. But what is known, is that the builder's approach will likely mean that the defective flooring will not be fixed until at least February, 2019.

Effect of this defect.

I kept the apartment unoccupied to permit inspection and speedy rectification of the flooring defect. In total, and as of 27 November, the builder's failure to deliver, as per contract, an apartment rentable at market value has cost me upwards of $13,000, as of 30 November. If it is not repaired until February, 2019, my losses will be at least $18,200 consisting of:

- Lost rental income: $16,000
- Cost of keeping electricity connected: 400

- Water: 300
- Rates: 800
- Strata fees: $1200

In addition, I was to settle on a block of land,where I intend to live until I needed to live in my apartment. I can't now do that, because I am footing the bills for this property. As a result, I face loss of about $12,000 from having to withdraw from that purchase.

Were I to sell the apartment, my losses would exceed $80,000.

Construction and design defects: many minor, indicating poor quality control

There were several minor and quickly fixed construction defects.

(a) spigot for the dishwasher waste water had not been drilled out and so the device would not drain and would not work;

(b) bathroom door squealed when slid open or closed owing the the guide-track being improperly adjusted.

(c) hole in the side of the laundry basin cabinet was incorrectly located and too small, thereby preventing the connection of power, water inflow and out flows for the washing machine.

(d) the waste water outflow from the top of laundry basin was not attached to the S-bend waste water pipe. [Not fixed because I only discovered it after the period for notifying defects.]

(e) laundry cupboard. This is poorly designed. [See below] It should be 2cm wider and 2 cm deeper. As it is, it is not deep enough to accommodate a standard front loader. As a result the doors rattle when the washer spins. I have installed spacers between the doors and the door jam to alleviate this.

I later discovered that at least one of the power points had not been installed level but sits at an angle. Some of the issues I encountered that could be easily rectified were rectified by the builder – or me.[1] However, the fact that there were such defects suggests a failure to implement effective and methodical quality control and design considerations.

Design defects

I would now like to make some comments about the inadequacy of the design.

The design of the apartment, as an example of architectural skill and talent, is poor. In short, it is not well designed. The living area space is not well-suited for living. I have been in apartments in Europe and in Sydney of similar size (73sqm) that are more creatively designed and are more habitable. The major issues are:

(a) layout of apartment: contrary to the architect's spiel [see annexure] the apartment's living area is unimaginative and poorly thought through owing to the two doors to the bedrooms opening onto the living space, thereby making use of the living area awkward and reducing privacy.

(b) placement of power-points, in general and for microwave and refrigerator is ill considered. Their placement renders the wall and living area nearby unusable; and for the microwave and refrigerator, the points are placed too low in the cabinets, thereby preventing the appliances from being adequately recessed.

(c) placement of power point and washing machine water taps in the laundry. The power point is too close to the taps creating a crowded space. Connection of the washing machine water hoses is very difficult. Moreover, the power point is below the level of the taps – increasing the risk of an electrical issue if

[1]Discussing the location of power points and television antennae plugs with other owners, I discovered that poor placement of the power points is a common design defect. They report having to run power cords and television anttennae cables over floors thereby producing trip hazards or making spaces less useful and livable.

water leaks from the tap or the connections. Typically, good practice is to have the power point above the water taps. See photographs.

(d) airflow: The apartment achieves its energy rating (which is 8) by being sealed. There is no vent drawing in even a small volume of fresh air. The design should have included a "passive" system, permitting a small inflow of fresh air. Typically such vents are included above a door to a balcony or the window in a bedroom.

All these design defects reduce the amenity of the apartment and, unless an occupant is mindful, produces condensation and the risk of mould. [Were I to live there, I would install a de-humidifier and air the apartment daily.] Experienced builders and architects, exercising thoughtfulness, should not have made such errors.

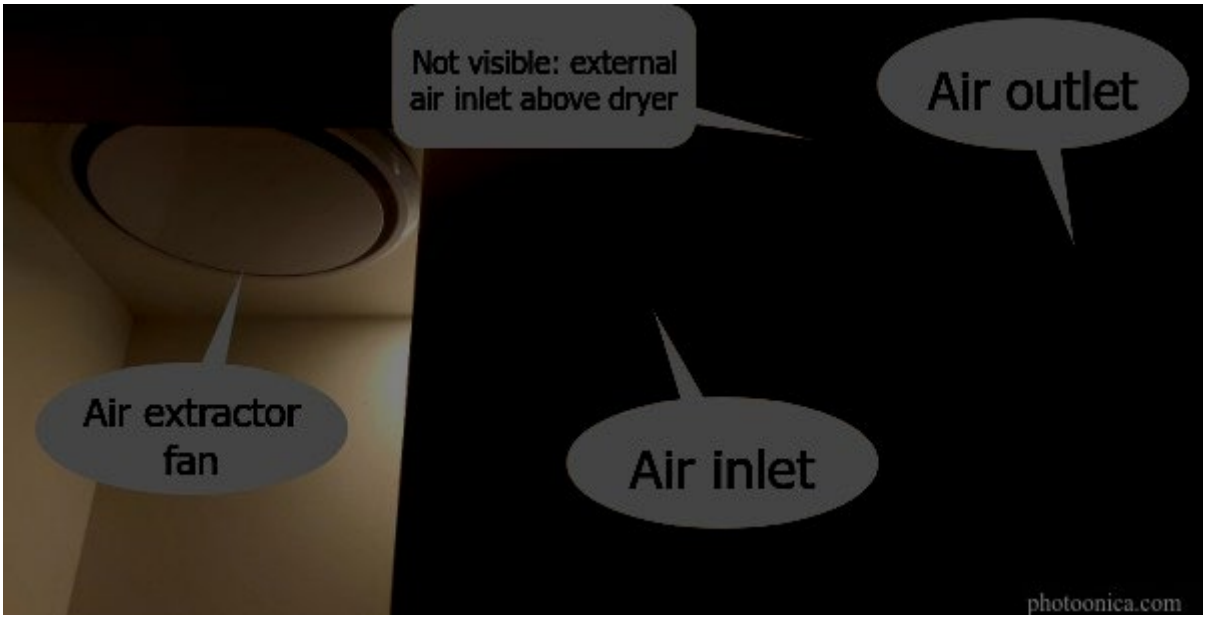
Major design defect

Apart from the unimaginative configuration of the apartment, a major design defect is the laundry cupboard. See attached photograph. It is far too small, cramped, poorly designed and fails to allow sufficient airflow. It is not suitable even for a front loader – which is the only type of washing machine that can be installed. [A top loader could not be installed but that is fine with me.]

One problem is the space for the washer is not deep enough. Until I installed spacers between the laundry cupboard doors and the door frame, the washer rattled against the cupboard doors when it washed and spun. Some residents have removed the cupboard doors in order to install a washer and stop the rattling against the cupboard doors.

Additionally, a standard wall-hang non-ducted dryer was installed rather than a condenser dryer, which would be more suitable for a small apartment and is more energy efficient. When construction of the apartment was under way I asked for the wall-hang dryer not to be installed as I wanted to install a condenser dryer, at my own cost. I was told such a change was not possible.

The laundry cupboard has an air inflow in the ceiling above the dryer [not visible in photograph]. Beside it and to the left, there is an exhaust fan. The dryer has an intake vent on the left and on the right, an outlet vent for the moist, hot air from the dryer.



The dryer is not ducted. Hot, moist air is expelled from the dryer into the cupboard when the doors are closed, as they must be. The dryer ingests this air and a small amount air from the inflow point above the dryer. To be sure,

before air leaves the cupboard, via the exhaust fan in the ceiling further on the left, air expelled from the dryer has to flow past the intake for the dryer, where it is re-ingested by the dryer. This arrangement leads re-circulation of moist, hot air into the dryer, some condensation, longer drying times and higher energy usage. The problem is exacerbated by fact that the exhaust fan in the ceiling does not appear to be able to move a volume of air at or above the volume expelled by the dryer. This is also suggested by the fact that an encrusted layer of fluff expelled from the dryer, is quickly deposited on the architrave of the drying cabinet, suggesting air is escaping round the gap in the cabinet door. This occurs even when the dryer filter is cleaned before each load.

Opening the laundry cupboard doors makes little difference and only creates other problems: access to the bath room is blocked and the humidity of the apartment is increased.

What should have occurred is:

(a) the dryer and washer should have been installed side by side. This could have been done if the width of the cupboard had been increased by about 20 cm and deepened by 5 cm. There was space enough to do that; and

(b) a condenser or split system dryer should have been installed and either the intake or exhaust ducted externally to prevent re-ingestion of expelled air.

As it stands, at some stage in the future, I will have to gut the cupboard in order to install a condenser dryer.

The installed arrangement, combined with poor general airflow, increases the humidity of the apartment above recommended levels (in Australia, 30 – 50 percent, according to the Asthma foundation)[2].

I purchased a hydgrometer. Over a seven day period, when the apartment was unattended except when I entered to take readings the relative humidity was between 55 and 65 percent. I air the apartment when I have visited at other times, but the humidity does not get below 45 percent. This is likely to increase the risk of mould and other airborne hazards and is likely to affect health, particularly those who have lung ailments, such as me. To reduce the risk, I will have to take more active measures to reduce humidity, such as by purchasing a de-humifidier.

A number of residents have mentioned condensation issues to me. These problems could have been avoided had the apartments been designed more carefully, specifically in respect of airflow. I air my living spaces daily, but many people do not, particularly in the depths of winter.

Operating the air-conditioner on its de-humidification function should reduce the humidity; however, the air conditioner actually increased the humidity in the apartment rather than reduced it. This makes me suspect the air conditioner is not operating correctly. Moreover, in winter (July – August) the heating function was barely adequate. Therefore, the adequacy of the reverse cycle air conditioning remains to be determined. I suspect the air conditioner has not been installed correctly and is inadequate or inappropriate for the dwelling.

Other defects residents and owners discovered

These included:

(a) Tap levers that fall off. Likely a defect of installation.

(b) Shower doors and cubicle design permit water to wash into the bathroom. Likely a defect of design.

(c) Other residents have told me and shown me windows that do not close properly. They only discovered these after the 90 day defect period elapsed. The cause is not clear in all cases, but in some, it appears the structure of the building has moved, distorting the window frame; however, the frames themselves were not well made.

(d) Ingress and egress to the roof space for maintenance is, apparently, difficult owning to poor design.

[2]Leanne Koster, “Indoor humidity and your family’s health”, 16 February, 2016. https://www.nationalasthma.org.au/news/2016/indoor-humidity. “Most people find that a relative humidity between 30 to 60 percent is the most comfortable, with indoor humidity ideally between 30 to 50 percent”.

(e) Cooking vapour is distorting and bubbling the cabinetry above the cook-top. Likely a defect of design, material selection and construction.

The strata committee is apparently considering commissioning a building inspection to assess the quality of build and identify defects. The cost is likely to be about $5,000. This should not need to be done for a new building.

What I would like to see

Before I go on to set out some suggestions for reform, I state what I think it is reasonable for a purchaser to believe when signing the purchase contract and the service they can reasonably expect.

Given the representations the developer, builder and architect made in brochures and on their WWW sites, I do not think it is unreasonable for purchasers to believe that:

(1) the developers, builders and architects representations in the brochures are accurate and that they know what they were doing.

(2) the apartment would be fit for purpose when settlement occurs;

(3) defects would be rectified in a timely manner;

(4) purchasers would be kept abreast of plans to remedy defects and would not need to chase information; and

(5) losses incurred be repaid.

Apart from engaging in lengthy and expensive litigation, I have few remedies and do not really know who I can contact for advice. I do not know (without consulting a lawyer – and incurring more cost) who is ultimately responsible to remedy the defects in the floor or who if anyone can enforce a solution.

The ACT government WWW site, Access Canberra, is not informative. It is poorly designed, opaque, and it takes some digging to discover where one may – possibly – make a complaint. And even then, the WWW site seems to suggest that I have no grounds for complaint:

> Examples of complaints that can be investigated by the Registrar include:
>
> ...
>
> ➓ unacceptable standard of building work
>
> Some examples of issues the Registrar will not investigate include:
>
> ➓ Contractual disputes - the Registrar will not take sides in contractual disputes
>
> ➓ Fit and finish issues - building laws do not cover painting, cleaning, internal joinery, appliances and other fit and finish or non-structural issues.[3]

Do I have a contract dispute? A dispute concerning " other fit and finish or non-structural issues" or "unacceptable standard of building work"? The fact that the dispute was originally about unacceptable standard of building work but has now been transformed into a dispute about the contract, seems to provide a convenient exit for the builder (and indeed, flooring contractor and developer).

In any case, the fact the Registrar will not investigate contract or fit and finish disputes is unacceptable.

Purchasing a home is the most significant investment any ordinary person will make. I, like the other 50 apartments known to be affected, do not have any easy to access remedy for the losses incurred or to get the defect repaired. The current legislation in the ACT is defective and weighted in favour of developers and builders.

[3]https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3331/~/controlled-activity-or-construction-occupations-complaint.

Therefore, additional protections are required, not only to provide simple and enforceable ways to ensure defects are remedied, but also to ensure buildings are fit for purpose. This would include setting design rules that are realistic as well as that dwellings are delivered to the standard the person purchased.

Easily enforceable contracts are one part. Another is information to inform purchasers' choices, specifically about developers, builders and architects.

I know from news reports that purchasers in other developments have incurred losses, sometimes considerable losses, because their apartments have not been well designed or well built. Or both. But there is no public registry of such problems.

I also know that information about the successes and failures of architects, developers and builders is difficult to obtain. Prospective purchasers are unable to easily discover who are reliable members of the building industry and who are not. Therefore, in order to inform the market, when a builder seeks to obtain and retain a licence, there needs to be public information that includes not only the builder's technical skill but also a statement about the builder's reliability. What a person knows about a builder should not be left to a builder's own advertising or the builder's self-assessment.

This is necessary for a market to work. In short, purchasers must not only be assured that there are standards, such as building standards and that they are enforced. The public also need to know who those members of the building industry who live up to standards and do good work and those who do not. This is necessary so that purchasers can make an informed decision and the discipline of the market can be imposed on those who fail standards, while those who meet them can be justly rewarded. Without such information a market cannot operate.

The failures in the present system occur because, in part, information relevant to decision making and the effective operation of the market is not available, making complaints is not easy, and investigation is not facilitated. And there is no effective enforcement or an effective and accessible means of obtaining a remedy.

With all this in mind, I have the following suggestions that centre on the ingredients necessary for a market to operate: availability of information and standards, including the enforcement of standards.

Information

1. Purchasers be given plain English information on what it is reasonable for a purchaser to expect and who is responsible for the remediation of defects. All contracts should in my view, contain some clause along the lines of:

> You are purchasing this property from ABC. XYZ are responsible for the quality of the workmanship and for making good any defects discovered during the warranty period or significant defects in design or construction thereafter. You are entitled to expect that the property you purchase is: [list expectations] and fit for habitation or rental at the time of settlement. Claims for remediation of defects and compensation must be lodged in writing with [a nominated entity listed, with contact details] by X date and such defects as are accepted will be rectified by Y date, or compensation will be payable by ABC and remediation will be overseen by [name of an ACT government building standard enforcement tribunal].

2. Purchasers be given in the purchase contract plain English information on where they can go for advice or to have defect repaired if the builder or developer does not do so in a timely manner, or defect rectification period. In my case, 90 days. This must be given at the exchange of contract and again when purchasers collect the keys as well as posted on the WWW.

3. All defects and complaints about design and workmanship must be listed with a government-operated central registry which operates as a disputes tribunal. It will monitor rectification, compile statistics and report publicly. This should be funded by licence fees and a construction premium on each building. This information will assist the operation of the market and better inform potential purchasers.

4. Developers, builders and architects whose work is found sub-standard and who do not rectify within an agreed time frame, will be listed on a publicly available roll. And those who feature in upheld complaints more than twice, will be named. This will impose the discipline of the market on them.

5. Representations in brochures and all advertising must be included as part of the contract and explicitly so. Vendors must be prohibited from excluding such representations as appear in the brochures from forming part of the purchase contract.

6. The purchase contract or special conditions attached must not contain any clause that excludes or could be interpreted as preventing, purchasers seeking remedies for poor workmanship or defects or failure to honour the contract or seek damages for loss. As it stands, clause 20 of the special conditions for the purchase of apartments in my complex appears to provide just this:

> 20 Claims
>
> The Buyer may make no requisition, claim for compensation, objection nor delay Completion for any other matter disclosed or referred to in these Special Conditions, or disclosed or referred to in any document annexed to this Contract.

This is unconscionable. On its face this clause seems to mean that the developer and builder can sell a defective product, cannot be forced to repair it – and the purchaser has no remedy in law for loss or damages. It should be prohibited.

Standards and their enforceability

1. Pre-settlement inspection: each purchaser or representative, be given at least one hour in the case of an apartment or two hours in the case of a dwelling, to inspect the property pre-settlement.

2. As mentioned, clear lines of legal responsibility that ordinary people can understand and remedies that are easy and cheap to access must be legislated. And these must be enforceable, not just against companies but individuals. For this reason, I suggest that a building standards and disputes tribunal be established. Such a tribunal would, amongst other activities, oversee the rectification of defects that have not been remedied in the contracted time. The tribunal would impose a time frame for rectification of defects, monitor rectification progress and make enforcement orders as necessary. It should also have the power to adjudicate complaints. Apart from having the power to impose enforceable orders on companies and their principals for non-compliance, the tribunal should have the power to suspend licences and make orders for restitution for loss and so on. It should have a “name and shame” jurisdiction as well. This will impose market discipline on builders, architects and developers. Former builders, developers and their associates should be excluded from appointment.

Additionally, such a body must have the power to call for documents, people or other things, in order to reach its decision and also call a compulsory conference, enforce communication between affected parties. As I have suggested in this submission, poor communication from the builder and flooring installer has been a persistent and ongoing issue in my experience.

Such a tribunal should be able to settle matters that at present the Registrar administering the controlled activity or construction occupations complaints process will not consider [as noted above] or where the registrar’s jurisdiction is ambiguous. It should, ideally, operate on an inquisitorial not adversarial model.

3. Establish clear ACT standards for minimum apartment size, the placement of power points, water outlets, minimum distances between essential services outlets, ventilation, heating and cooling and design of essential services, such as the laundry. For instance, standard dryers should no longer be permitted in apartments, but condenser dryers or similar should be mandated, with adequate and effective ventilation. Apartments must be fitted with adequate general ventilation. In some of these areas, there are national standards and sometimes state standards. They are not effective.

Concluding remarks

This purchase has been very disappointing and costly to me. I see no remedy and am considering selling the apartment and wearing the loss. I doubt if I will purchase again in Canberra.

I was fully aware that the construction industry in Canberra is infested with individuals who promise much but deliver work not in keeping with the promises made. I did due diligence but was still caught.

In many respects, and from a strictly utilitarian point of view, the suffering and disruption to the lives of Canberrans is far greater, more lasting and more profound from sub-standard building and design, than serious crimes against the person. For instance, the effect of terrorism on the community is far less and of shorter duration than the malignant actions of members of the construction industry. Yet, governments find it possible to legislate with alacrity to deal the the menace of terrorism, including infringing our liberties, but is unable or unwilling to legislate to deal with the menace to individuals and the threat to the community presented by rogue members of the construction industry.

Let's be clear: the actions of developers and builders that fail to provide a product as agreed and who refuse or delay remediation of the defects, are committing fraud and theft. It seems that the regulators have often been captured by the very people they are duty bound to regulate.

Governments opine that their first duty is to keep the community safe, but their record demonstrates they are unwilling and unable to keep the community safe from predators in other parts of the community who do far more harm.

This is particularly worrying because so many of the miscreants in the construction industry are serial offenders whose records are known to some. Only with access to information and an effective regulatory environment, free of the influence of the regulated, can be problems be identified and remedies provided.

For those members of the Legislative Assembly who believe the operation of market mechanisms is the best way to provide social goods, reforms that increase the power of consumers by providing information and easily enforceable rights can not, in good conscience, be delayed or rejected. To reject such reforms would generate the perception, and licence the allegation, of not being sincere in their beliefs and siding instead with people who do so much ham to the community.