

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

Complaint no.	950 of 2020
Date of filing:	15.10.2020
First date of hearing	08.04.2020
Date of decision	21.03.2023

Anish Jain R/o: BG-02, Mahindra Aura, Sector 110A, Gurugram, Haryana-122017	<b>Complainant</b>
Versus	
1. Mahindra Homes Pvt. Ltd. 2. IREO Pvt. Ltd. Regd. Office: Mahindra Towers, 5 <sup>th</sup> floor, Road no. 13, Worli, Mumbai, Maharashtra-40001	<b>Respondents</b>
<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Harshit Batra and (Advocates)	<b>Complainant</b>
Sh. Saifur Rehman (Advocate)	<b>Respondents</b>

**ORDER**

1. The present complaint has been filed by the complainant under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 3, Section 4 and 15 of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and

functions under the provision of the Act or the rules and regulations made there under.

**A. Project related details**

2. The particulars of the project, the nature of the project and occupation certificate related details, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"Luminare ", Sector 59 Gurugram
2.	Area of the Project	71.55 acres
3.	Nature of the Project	Group Housing Project
4.	DTCP Licence	16 of 2008 dated 31.01.2008 valid upto 30.01.2025
5.	RERA Registration no.	42 of 2017 dated 26.10.2017 valid upto 31.03.2021
6.	OC received on	22.01.2019 for the Tower-I and EWS which is annexed at page 32 of the complaint 10.10.2019 As per the website of DTCP

**B. Facts of the complaint:**

3. The complainant made the following submissions in the complaint:-
- The complainant is a resident of group housing society "AURA" developed by Mahindra Life space Developers Limited. Aggrieved by poor quality construction, violation of terms of occupation certificate, illegal issuance of completion certificate, violation of terms of completion certificate, besides other illegalities like

violations of building plans, H-Vat calculation, sale of open parking etc., the complainant filed RTI application/s but the efforts of the complainant to get information from the officials of DTCP under RTI Act have gone in vain, and in Second Appeal before State Information Commission, Haryana, show cause notice as to why penal action be not initiated against them has been issued on 06.02.2020. The complainant also filed a complaint on 12.06.2019 with CM Grievances Cell (CM Window), vide no. CMOFF/N/2019/060851 but to no avail as well and is still pending. A project under the name of "Luminaire" is being developed at Village Behrampur, Sector 59, Gurgaon.

- (1) Base Exports Private Limited,
- (2) BTVS Buildwell Private Limited,
- (3) Adson Software Private Limited,
- (4) Ornamental Realtors Private Limited, and
- (5) Aspirant Builders Private Limited, are the "licensees" under License bearing no. 16 of 2008 granted by Directorate of Town and Country Planning, Haryana at Chandigarh (in short "DTCP). The project has been got registered by "Ireo Private Limited" (in short "Treo") and "Mahindra Homes Private Limited" (in short MHPL) claiming to be Promoters under the Act vide registration number 42 and 47 of 2017.

- ii. That the Mahindra Lifespace Developers Limited" (in short "MLDL") is the parent company of MHPL, and MLDL is in turn a wholly owned subsidiary of "Mahindra and Mahindra Limited" (in short "Mahindra"). As claimed in various declarations to SEBI and other authorities by Mahindra, MLDL and MHPL, the brand and

trademark name "Mahindra Lifespaces" being used by MLDL and MHPL is licensed by Mahindra by way of multiple trademark license agreements (July 11, 2013, with addendum dated November 29, 2013, in this case). As such Mahindra is in business of real estate development through MLDL and MHPL and is the owner of a website "www.mahindralifespaces.com", where various projects developed by MLDL, MHPL or other subsidiaries are showcased, advertised, offered for sale and public at large invited to purchase the apartments. Till date the name of Mahindra, MHPL, and MLDL or Ireo is not reflected as a license in records of DTCP as is evident from copy of renewal of license dated 08.01.2019. Apart from Ireo, all other three companies i.e. Mahindra, MLDL and MHPL are the Promoters under the Act, however, Mahindra and MLDL did not get the Project registered as a Promoter, as such the name of the developer Mahindra and MLDL is not mentioned in the certificate issued by Interim RERA Authority. Needless to say, Mahindra and MLDL cannot take any benefit of the registration by MHPL being separate juristic entities say, Mahindra and MLDL cannot take any benefit of the registration by MHPL being separate juristic entities. Surprisingly the licensee companies / land owing companies are also not depicted as "Promoters" in the registration certificates granted under the Act by Interim RERA Authority.

- iii. That the Mahindra and MLDL are openly advertising, marketing, booking, selling or offering for sale, or inviting persons to purchase in any manner the apartment in the real estate project being developed under license bearing number 16 of 2008 or part of it,

in the Gurugram planning area, without registering the real estate project with Haryana Real Estate Regulatory Authority, Gurugram. Some documents evidencing the same are attached herewith.

- iv. As a matter of fact, it appears that in 2013, MLDL entered into a joint venture arrangement with SCM Real Estate (Singapore) Private Limited. Pursuant to the joint venture agreement, SCM real estate and MLDL had invested in the joint venture company, Mahindra Homes Pvt. Ltd. In which each party held 50% equality stake.
- v. The licensees, Mahindra, MLDL and SCM Real Estate (Singapore) Private Limited have not got registration done under Section 3 of the Act, as such has violated the provisions of Section 3 of the Act and have rendered themselves liable to be penalized under Section 59 of the Act. It appears that licensee have an unregistered collaboration agreement with Ireo, who in turn assigned the development rights to Mahindra and MLDL through MHPL.
- vi. It is evident that, no permission has been taken by either Ireo, Mahindra, MLDL or MHPL from DTCP for permission to develop the project or to transfer their development rights. It is clear that the companies complained against have no respect for law and are only interested in illegal profiteering by misleading /giving false information various regulatory authorities, which act needs to be controlled and guilty punished.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):

- i. Call for and consolidate file pertaining to RERA registration no. 47 of 2017 to the present complaint.

- ii. Direct the licensee companies, Mahindra Lifespace Developers Limited, Mahindra Homes Private Limited and Ire Private Limited not to advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any apartment or part with possession of any part of the project or apartment/s, as the case may be, in the project Luminiare;
- iii. Direct Sub-Registrar having territorial jurisdiction over the project not to register any document in respect of the project Luminiare.
- iv. Direct DTCP not to grant any permission in respect of License bearing no. 16 of 2008;
- v. Direct DTCP to submit record in original in respect of License bearing no. 16 of 2008;
- vi. Direct the violators to submit their title deeds / deeds under which rights are claimed in original with the Authority;
- vii. Direct DTCP to cancel the License and all permissions emanating ut of the said license;
- viii. Direct handover of the project to HUDA / HSIIDC for completion;
- ix. Costs of prosecuting the present complaint may also be granted to the complainant;

**D. Reply by respondents:**

5. The respondents by way of written reply made following submissions:
  - i. That the respondent submitted that the complainant has no locus standi to institute the complaint as he is neither an allottee, nor is he a real estate agent, nor is he aggrieved by and/or concerned of project luminaire ("the project"), whether in whole or in part. The complaint is nothing but a vexatious and malicious attempt by the

complainant to embroil the respondent in frivolous and fabricated litigation. Hence, the same is not maintainable and is liable to be dismissed with exemplary costs.

- ii. Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act") defines an "allottee" as "in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent".
- iii. That the use of the term "means" (as emboldened in the definition) in the definition, would denote a hard and fast definition and no meaning or enlargement other than that which is put in the definition can be assigned to the same. The literal construction of the definition of the allottee in accordance with the principles of interpretation of the statute and in conjunction with the legislative intent would manifest that any entity which/who does not partake in the designated activities as stated in the definition will not be an allottee and thus, cannot invoke the jurisdiction of the adjudicating authority set up by and under the Act. There is no privity of contract between the complainant and the respondent pertaining to the project luminaire and/or otherwise, so as to vest semblance of any right or entitlement to that of an allottee. The complainant has no contractual or legal right by virtue of which he would be an allottee as defined under the said Act. In '*stricto sensu*', since the

complainant is not an allottee as per the provisions of the said Act, he has no remedy under the Act. It is apparent and clear by the conspectus of the Act that the obligations of the promoter are towards the Authority and stakeholders as designated and enumerated by the Act and the corresponding Rules, and most certainly the complainant who is not an allottee cannot claim to be a beneficiary of the beneficence of the Act. Even otherwise, the doctrine of privity of contract is a common law principle which provides that a contract cannot confer rights or impose obligations upon any person who is not a party to the contract. The premise is that only parties to contracts should be able to sue to enforce their rights or claim damages as such. In view thereof, since there is no 'contract' in place by and between the complainant and the answering respondent, there exists no privity of contract and thus, the complainant is not liable to sue or enforce its rights and/or claim damages, as the case may be, in relation thereto, as alleged or at all. Furthermore, in the matter of **Navin Raheja Versus Shilpa Jain and Others**, it was upheld by the National Company Law Appellate Tribunal, New Delhi that " ..

*... They can also point out that in a real estate market which is falling, the allottee does not, in fact, want to go ahead with its obligation to take possession of the flat/apartment under RERA, but wants to jump ship and really get back, by way of this coercive measure, monies already paid by it. Given the above, it is clear that it is very difficult to accede to the Petitioners' contention that a wholly one sided and futile hearing will take place before the NCLT by trigger-happy allottees who would be able to ignite the process of removal of the management of the real estate project and or lead the corporate debtor to its death."*



- iv. Also, the Hon'ble Supreme Court of Indian In the landmark judgement of **Pioneer Urban Land and Infrastructure Limited and Anr. Versus Union of Indi and Ors., upheld that** " ... it is clear that the Adjudicating Authority (National Company Law Tribunal) before admitting a case can find out whether the application filed by trigger-happy allottees who would be able to ignite the process of removal of the management of the Real Estate project and/ or lead the 'corporate debtor' to its death.
- V. It is therefore clearly emergent that firstly one has to be an allottee in the strict sense and further so not be in the negative category as duly laid down by judicial precedents. That by the averments made by the complainant, it allegedly appears that the complainant is an allottee of a different group housing society project Aura, developed by Mahindra Lifespace Developers Limited (hereinafter referred to as "MLDL") which is a 'separate juristic and 'independent legal' entity. As a general rule under law, a subsidiary or any distinctive company remains a separate legal entity. Furthermore, it is also to be noted that, the two projects, that is, Aura and Landmark are separate and distinctive, based on separate structural ecosystems of distinct identity, existence and organisation and matters relating to both cannot be enmeshed together, as has been sought to be done by the complainant in a diabolic manner. The Acts of MLDL cannot be mired, intertwined or merged with that of the answering respondent so as to vest the complainant the right to invoke jurisdiction of this hon'ble authority against the respondent and the project.

vi. The instant institution of the present complaint is nothing but a deplorable, mala-fide, unjustified and illegal exercise of a roving enquiry to extract information against the respondent and the project which he is not entitled to, and which is not tenable in law. The instant complaint is an afterthought by the complainant, motivated by his grievances in relation the project Aura. There is no violation of the legal rights of the complainant as far as the project Luminaire is concerned. The alleged grievances of the complainant stem from the project Aura. However, the complainant has made several false and frivolous accusations such as (i) violation of Section 3 of the Act by Mahindra and Mahindra Limited (hereinafter referred to as "Mahindra"), MLDL and the respondent herein, that is non-registration of the project Luminaire prior to advertisement, marketing, booking, offering for sale etc. violation of Section 4 of the said Act by Mahindra, MLDL, SCM Real Estate (Singapore) Private Limited (hereinafter referred to as "SCM"), the land owning companies being Base Exports Private Limited (hereinafter referred to as "Base"), BTVS Bulldwell Private Limited (hereinafter referred to as "BTVS"), Adson Software Private Limited (hereinafter referred to as "Adson"), Ornamental Realtors Private Limited (hereinafter referred to as "Ornamental") and Aspirant Builders Private Limited (hereinafter referred to as "Aspirant") (hereinafter collectively referred to as, "Land Owners") that is, application by the promoters in respect of registration of the project; and violation of Section 15(1) of the Act by SCM, that is, approval of two-third of allottees and the concerned authority prior to transfer of majority rights in relation

to the project. All such allegations, contentions and insinuations are denied by the respondent in-toto.

- vii. With regard to the factual matrix of the matter, relevant and germane to meet and counter the allegations and insinuations of the complaint, it is submitted that MLDL is the holding company of the respondent herein. Furthermore, MLDL in turn is a subsidiary of Mahindra. Both, MLDL and Mahindra are separate, independent and distinct publicly listed entities. It is also pertinent to note that, SCM and MLDL are the two shareholders of the respondent company, who invested in the respondent company to enable it to undertake residential projects in India. Both, MLDL and SCM have promoted the Respondent, wherein they were holding voting rights and economic interest in the ratio of 50:50. Pursuant to the aforesaid, by and under the provisions of the shareholders agreement dated 25 July 2013, and the consequent allotment made in relation thereto, the proportion of equity stake with voting rights between MLDL and SCM was changed from 50:50 to 74.98:25.02 on 30 March 2017. However, the economic interest of both continued to remain at 50:50 in the respondent company. Thereafter, SCM's parent entity, Standard Chartered Real Estate Investment Holdings (Singapore) private limited (hereinafter referred to as "SCREIH"), sold its principal finance real estate business to Actis Mahi Holding (Singapore) Private Limited (hereinafter referred to as "Actis"), after obtaining necessary permissions and approvals from the concerned authorities in relation thereto. Pursuant to the aforesaid, the shares held by SCM in the Respondent company were transferred to and held by Actis.

It is also to be noted that both the entities, that is, MLDL and Actis (formerly SCM), had subscribed to the convertible debentures of the respondent company at the time of formation of the respondent company. During the financial year 2019-20, and pursuant to the terms and conditions of the convertible debentures, the respondent company issued and allotted equity shares to MLDL and Actis (formerly SCM), without any voting rights being transferred in relation thereto.

viii. In view of the factual matrix explained hereinabove, it is to be noted that the present proportion of overall equity stake with and without voting rights combined, between MLDL and Actis is 71.61:28.39, and both continue to be the shareholders of the respondent company. Furthermore, MLDL has not sold any shares in the respondent company nor has SCM transferred any shares to MLDL, as alleged by the complainant. The complainant has failed to appreciate and aver correctly that from the very inception of the project luminaire, the promoters are the respondent company and Ire, and they continue to be the promoters and there has been no change in the aforesaid position, requiring any approval as mandated and warranted under Section 15 of the said Act which, inter alia, enlists the obligations of a promoter in case of transfer of a real estate project to a third party, the same note being the case herein.

ix. Furthermore, it is also pertinent to note that the instant complaint is barred by limitation. Whilst the answering respondent does not admit to any allegations and the instant complaint is nothing but an attempt on the part of the complainant to conceal acknowledged

facts in cocoon of ambiguity, and without prejudice to its rights, it is to be noted that the project was conceived in the year 2015 and various sanctions and permissions to construct and develop were also granted in the year 2015, and necessary filings have been made in the RERA Authority commencing in the year 2017. Further, Occupation Certificate dated 22 January 2019 has been received in relation to Luminalre - Phase 1, together with the receipt of other approvals/permissions such as fire safety clearance dated 9 August 2018, lift certificate dated 22 February 2018, etc. The (a) Occupation Certificate; (b) Fire Safety Clearance; and (c) Lift Certificate. in view thereof, the present complaint is nothing less than a frivolous attempt on the part of the complainant to fulfil his private profits, personal gains and other oblique considerations and scuttle at such advanced stages in relation to development of the project in order to stall the same and harm the interests of the parties involved, including but not limited to the rights and interests of the home buyers. Thus, this authority should not allow its process to be tainted by such mala-fide actions upon the part of the complainant to fulfil his personal gains.

- x. Furthermore, the instant complaint vis-à-vis the respondent is not maintainable on the ground that the complainant is transcending the limits and the boundaries as permitted by the legislative policy relating to the jurisdiction of the authority. The crux and sum and substance of the complainant's matter also revolves around the allegations pertaining to transfer of shares by SCM to MLDL and transfer of shares by SCM to Actis; etc. As averred in paragraphs 6 and 7 hereinabove, MLDL has not sold any shares in the

Respondent company nor has SCM has transferred any shares to MLDL, as alleged by the complainant. However, without prejudice to what is stated hereinabove, it is also to be noted that such claims are not within the legal competence and jurisdiction of the authority.

- xi. In light and conspectus of the foregoing submissions and objections of the respondent in response to the complaint and refutation by the respondent of all allegations, contentions and insinuations in the on the premise that the complainant has made wrong and misleading averments smacking of malice and mala-fide intent against the respondent, the respondent further praying that the legal arguments are transposed on erroneous interpretation, understanding and proclamation of law. Further, it is apparent and clear that the complainant has sought to mislead this authority and such practice and conduct are deprecated in law or otherwise. The complaint is liable to be dismissed and the trigger-happy complainant be subject to heavy costs, penalties and punishment.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial Jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

#### **E. II Subject matter jurisdiction**

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

#### **Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

#### **Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

So, in view of the provisions of the Act quoted above, though the authority has jurisdiction to decide a complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by an allottee at a later stage. However, the issue in the case in hand arises as together the authority has jurisdiction to deal with the subject matter as set up by the complainant who is neither an allottee, promoter or agent of the

project being developed by the respondent. It is evident from a perusal of the complaint that the complainant is aggrieved from certain acts of the developer, but he is not an allottee of that project which may entitle him to file the complaint. During the course of the arguments the learned counsel for the complainant has not been able to show as to how the complaint filed under section 31 of the Act 2016 is maintainable. A reference in this regard may be made to the provision of section 31 (1) of the Act providing as under: -

**Section 31. Filing of complaints with the Authority or the adjudicating officer.**

*(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.*

**Explanation.**--For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

*(2) .....*

It is evident from a perusal of above-mentioned provisions that the complainant may have certain grievances against the respondent but the same are not related to the project in question entitling him to invoke the jurisdiction of the authority by way of complaint. Neither the complainant falls within the definition of an Allottee as defined under Section 2(d) of the Act, A promoter as per section 2(zk) nor a real estate agent as per section 2(zm) of the Act. So, if he has any grievance against the project of the respondent, he may approach the competent authority for seeking the desired relief and not by way of complaint which is not maintainable before the authority and the same being liable to be dismissed.

10. Complaint stands disposed off.



11. File be consigned to the registry.

  
Sanjeev Kumar Arora  
Member

  
Ashok Sangwan  
Member

  
Vijay Kumar Goyal  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 21.03.2023



**HARERA**  
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