

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 4139 of 2022
Date of decision : 18.05.2023

Fight against Injustice Forum
ADDRESS : E-701, Park Granduera
Sector-82, Faridabad-121007

Complainant

Versus

M/S Mahira Buildtech Private Limited
ADDRESS: 302 A, Global Foyer, 122002, Golf
Course Road

Respondent

APPEARANCE:

For Complainant: Mr. Ashwani Kumar Advocate
For Respondent: None

ORDER

1. This is a complaint filed by Fight Against Injustice Forum under section 31 of with sections 35, 36, 37 and 38 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) against respondent/developer.
2. According to complainant, it is a non-profit, non-commercial company voluntarily incorporated under section 8 of The Companies Act 2013. Same was approached by 24



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- individuals, who are dwelling unitholders in respondent's Affordable Housing Project namely, "**Mahira Homes 103**" situated at sector 103, Gurugram.
3. The approval, construction allotment and maintenance of affordable houses in Haryana is regulated by "Affordable Housing Policy 2013". (hereinafter referred as Housing Policy or the policy).
 4. The allottees had booked apartments in response to the advertisement issued by respondent, in year 2019 and they were assured that possession of flat will be given, within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later. As per information available with the allottees, the building plans were approved on 29.03.2019 and the environment clearance was issued on 29.01.2020. Hence, the date of commencement is 29.01.2020.
 5. The payment in Affordable Housing is time linked and in computation of time the date of commencement is the reference point. However, the respondent has taken the date of allotment as 01.07.2019 (date of allotment letter of one of the allottee), which is before the date of commencement. The first demand was to be raised within 15 days of the said allotment (16.07.2019), which is against the policy. The respondent raised demands and collected huge amount from the allottees, much before the date of actual commencement of the project which is 29.01.2020.
 6. The respondent while computing carpet area has provided its own definition in clause M of the Flat Buyer Agreement



(FBA), which is entirely in violation of clause 4(ii)(c) of the Policy, 2013. The allottees are being overly charged for approximately Rs. 50 to Rs. 60 sq. ft. or more, each.

7. The respondent in Flat Buyer Agreement (FBA) has inserted many clauses, which are against the Affordable Housing Policy of 2013. The Flat Buyer Agreement (FBA) is one-sided and the allottees were given no choice but to sign the agreement. The clauses where the allottees have objections are as under:

- I. Firstly, as per the Policy except the GST, no additional amount can be demanded by the respondent where else, the respondent in clause I has incorporated as under:

The Allottee agrees and undertakes to pay directly, or if paid by the Developer, then reimburse to the Developer, on demand of any Municipal Tax, Property Tax, Service Tax, VAT, GST and or any other statutory levy. The allottee further undertakes to make payment of any enhancement thereof including but not limited to external development charges (EDC) or any tax/charges, government levies including any fresh incidence of tax or compensation as may be levied, charged or imposed by the Government of Haryana/Competent Authority/Central Government, retrospectively or prospectively. If such charges are increased (with retrospective effect) after the conveyance/

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sale deed has been executed, then the Allottee undertakes to pay the same upon intimation by the Developer.

II. Secondly, holding charges cannot be charged, where else as per clause J of FBA:

The Allottee shall be liable to pay charges equivalent to Rs. 5/-(Rupees Five only) per month per sq. ft. on the total Carpet Area of the said Flat hereinafter referred to as "Holding Charge" and the said Flat shall remain at the risk and cost of the Allottee. The holding charges shall be a distinct charge in addition to the maintenance charge and not related to any other charges/consideration as provided in this Agreement. Further, it is agreed by the Allottee that in the event of its failure to take over possession of the Said Apartment within time and in the manner as aforesaid, it will be treated as breach of this Agreement.

III. Thirdly, as per 14(2) of Act of 2016, any alteration/modification can be done with the written consent of two-thirds of the allottees, where else clause 6 D of the FBA reads as under:

The First Party/Developer is in the process of developing residential flats in the Affordable Group Housing Colony "Mahira Homes-103" in accordance with tentative and consolidated layout plan for the Group Housing Colony, as submitted to the Statutory/Competent Authority for approval, which have been explained to and understood by the Allottee.



However, if any changes, alterations, modifications in the said layout/building plan and/or drawings are necessitated during the construction of the flat or as may be required by any statutory authority(s) of Govt., or otherwise, the same will be effected suitably, to which the Allottee shall raise no objection. The Allottee hereby issues a Consent Letter to the Developer which is annexed as Annexure D to the present Agreement whereby the Allottee declares and undertakes that it shall have no objection to such changes, alterations, modifications in the said layout/building plan and/or drawings.

8. It is pleaded by the complainant that the clauses above may kindly be ordered to be struck off or modified as per Affordable Housing Policy, 2013 and the respondent may be directed to pay compensation for the same and to get the agreement by the allottees, rescinded.
9. The complainant has prayed for following reliefs:
 - a. To award interest @9.50 p.a or as applicable on the date of orders (calculated as SBI calculates on its (Homes Loans) on the sum, called in advance, from the date of commencement, by the defendant and paid by the complaining allottees.
 - b. To award interest on the interest as computed under point an above @ 9.50% p.a or as applicable on the date of orders, from the due date till it is actually paid by the defendant.
 - c. To award compensation of Rs. 25000.00/- each to the complaining allottees for putting them in to undue harassment by calling instalments in advance.

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A.P.



- d. Reimbursement of charges charged by the defendant on account of miscalculated carpet area.
- e. To award compensation of Rs. 25000/- each to the complaining allottee for lesser carpet area.
- f. To award compensation of Rs. 25000/- each to the complaining allottee for making arrangements for resigning the agreement for sale. The cost of registration, typing and all other related expenses incurred on the respondent.
10. The authority issued a notice dated 28.06.2022 of the complaint to the respondent by speed post and also on the given email address of respondent i.e. gurgaon@mahiragroup.com. The delivery reports have been placed on the file. A notice dated 29.08.2022 was sent again to the respondent through email i.e. gurgaon@mahiragroup.com. Despite service of notice, the respondent preferred neither to put in appearance nor filed any reply to the complaint, within the stipulated period. Accordingly, this forum is left with no other option but to proceed the respondent ex-parte.
11. I heard Ld. Counsel for complainant & went through record. Even if respondent did not opt to contest the complaint, it agitated in the mind of undersigned as to whether complainant (Fight Against Injustice Forum) has any *locusstandi* to file present complaint on behalf of 24 allottees, as claimed by it.
12. According to complainant, same is a Voluntary Consumer Association, incorporated and registered under Section 8 of



The Companies Act 2013. Present complaint is filed on behalf of complainant having been signed by Sh. Ashwani Kumar Singla stated to be its director. The latter claims to have been authorised by the complainant to file this complaint on the basis of memorandum of association executed by the company, copy of which is Annexure P-2.

13. According to Section 31(1) of Act of 2016, any aggrieved person can file a complaint with the authority or the adjudicating officer as case may be, for any violation or contravention of the provisions of this act or rules and regulations made thereunder. By adding an explanation clause, parliament made it clear that for the purpose of this sub-section "person" shall include, association of allottees or any voluntary consumer association, registered under law. The complainant claims that it is registered under the Indian Companies Act, moreover it has been authorised by 24 allottees stated to be aggrieved persons. Authority letters are annexed with the complaint as annexure P-3.
14. Considering all this, and also the fact that the respondent did not object said fact in the absence of filing any reply in my opinion, the complainant has *locusstandi* to file this complaint.
15. Certain terms and conditions of the BBA got executed by the respondent are contrary to provisions of the Affordable Housing Policy. The allottees may ignore the same or same can get order/decreed of declaration in this regard from appropriate forum/court. This forum (AO) has limited

AO



jurisdiction to grant compensation u/s 12, 14, 18, 19 of the Act of 2016.

16. The complainant has also claimed that the respondent has wrongly calculated the super area. It is not explained as how super area has been wrongly calculated by the respondent.
17. As claimed by complainant, date of commencement of the project could be taken as 29.01.2020 The Respondent was not empowered to collect money before the date of commencement i.e., 29.01.2020. It is pointed out that respondent collected 20% of cost of dwelling units from some allottees, as allotment money and that before the commencement of the project, which resulted in loss to the buyers. The complainant has prayed for awarding of interest @ 9.50% per annum on the daily basis for the number of days, the respondent demanded money in advance from the allottees, in respect of first instalment/allotment money (20% of total cost and remaining 75% of cost in six half yearly equated instalments).
18. As respondent did not contradict the said plea of complainant, in absence of any reply, same can be presumed to have admitted said fact. The respondent collected money from buyers/allottees before the date of commencement, which was contrary to terms of policy. Hence, the allottees are thus entitled for compensation in this regard. The respondent is directed to pay interest to such allottees on amount which same were forced to pay before the date of commencement i.e. 29.01.2020 and exceeding 5% of cost @9.50% p.a. as claimed. Respondent is further directed to



pay interest to such allottees from whom same collected instalments of payments contrary to Affordable Housing Policy.

19. The complainant has prayed for order to respondent to get carpet area of allotted units re-measured alleging that it (Respondent) is overcharging the allottees for about Rs. 50 to Rs. 60 per Sq. Ft. All this is not within the jurisdiction of this forum (AO) The complainant can exhaust its remedy somewhere else. Moreover, it has not been proved that carpet area is wrongly measured by the respondent. Thus, no compensation can be awarded to the allottees for miscalculation of carpet area or for providing lesser area. Request in this regard is declined.
20. As described above, complainant has claimed for compensation of Rs. 25,000/- to each of allottees for putting them in undue harassment. True, due to the act of respondent of not adhering to terms of Affordable Housing Policy, the Allottees suffered harassment & mental agony. There is no formula to decide amount of compensation in this regard. Keeping in view facts of this case, this forum (AO) allows a sum of Rs. 25,000/- as compensation to each of the allottees in this regard, to be paid by the respondent.
21. The complainant did not put on file any receipt of payments to its advocate as the fee, but it is fact that the same was represented by an advocate during proceedings of this matter. The complainant has approached this forum and it certainly has caused a lot of financial burden in form of

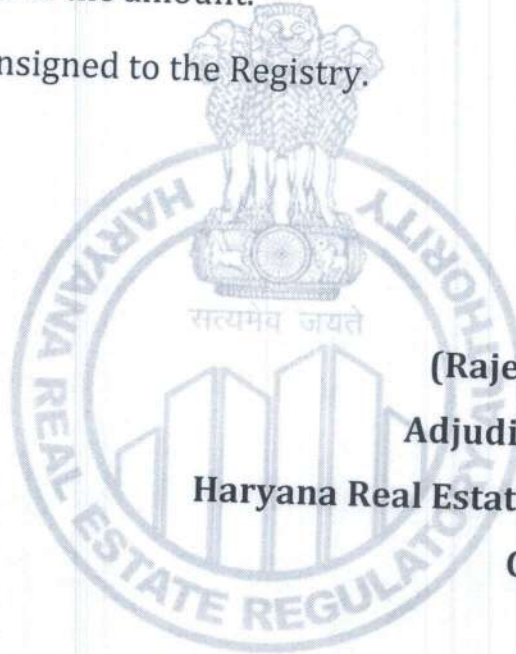


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litigation cost. Therefore, the complainant is allowed Rs. 50,000/- as the cost of litigation.

22.The Complaint stands disposed of. The respondent is directed to pay the entire amount of compensation and litigation cost as detailed above, within 30 days of this order, otherwise same will be liable to pay interest @9.50% P.A, till realization of the amount.

23.File be consigned to the Registry.



Jsk

(Rajender Kumar)

Adjudicating Officer,

Haryana Real Estate Regulatory Authority

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