



Complaint No. 464 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 464 OF 2019

Kanwar Singh

....COMPLAINANT(S)

VERSUS

Mudra Finance Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 12.10.2021

Hearing: 13th

Present: Mr. Narender Kumar Sharma, Counsel for the complainant and Mr.

Kanwar Singh, Complainant-in-person.

Mr. Vineet Sehgal, Counsel for the respondent through VC.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Present complaint is filed by Residents Welfare Association (RWA) through its President Kanwar Singh raising various grievances against respondent-promoter. The foremost grievance was that the promoter had collected IFMS amount of Rs. 4,54,30,260/-, but had handed over only Rs.

61,00,000/- to the RWA. Authority vide order dated 01.04.2021 laid down certain principles in regard to IFMS amount which are reproduced as follows:

“3. The Authority considers it appropriate to lay down the principles regarding Interest Free Maintenance Security (IFMS) collected by the developers from the allottees of a project. It is understood that the amount of IFMS is not a part of the sales consideration of the apartment/plot. This amount is charged in addition to the consideration of the plot. As the very name suggests, it is a security deposit contributed by all the allottees for future maintenance of the project. It is also understood that this amount is meant to be handed over to the Association of Allottees. If any money out of this is spent on the project, a separate account thereof also should be handed over to the Association of Allottees. From this discussion it is clearly understood that the promoter cannot treat this money as his own or be free to utilise it for any purpose he considers appropriate. Viewed from this angle, the entire amount of IFMS collected by the promoter should be deemed to have been held in trust by the promoter. The promoter should be treated as a trustee of IFMS amount collected which in due course of time has to be handed over to the Association of Allottees. If any amount out of this is



spent on the project, an account thereof along with justification has to be provided to the Association of Allottees.

4. In all the projects apart from one time contribution of IFMS, allottees also pay monthly maintenance charges to the Maintenance Agency or to the promoters. Such maintenance charges are collected under variety of names. The amount so collected on monthly basis is distinct from the amount collected as IFMS. IFMS is a one-time security deposit which is supposed to be spent on the creation and the maintenance of capital assets of the project. It is distinct from monthly maintenance charges which are meant to be deployed on day-to-day upkeep of the project such as maintenance of parks and gardens, cleaning of roads, cleaning and washing of tanks and other areas etc.

5. The Authority is of the view that IFMS amount is held by the promoter in trust on behalf of the allottees and it has to be handed over to the Association whenever a lawful association is created and the project is handed over to them. Such amounts should be handed over immediately within a reasonable period after formation of the association. For the period of undue delay caused in handing over of this amount to the association, the



promoter is liable to pay them interest at the prevailing rates of interest applicable on the fixed deposits in a scheduled bank."

Further, Authority vide order dated 11.08.2021 made the following observations with regard to issue of withholding of IFMS amount by the respondent:

"1. The Authority in its order dated 01.04.2021 had observed that IFMS amount being a security deposit contributed by all the allottees for future maintenance of the project can neither be treated by a promoter as his own nor he is free to utilise the same for any purpose he considers appropriate. The promoter should be treated as trustee of IFMS amount and he is duty bound to hand over the same to RWA. An opportunity was afforded to the promoter to prove otherwise by adjourning the case to this date. Today, the promoter has not been able to convince the Authority for taking any other view in the matter and therefore, the Authority confirms its view on the point that the respondent was trustee of the IFMS amount. Accordingly, the respondent-promoter is directed to hand over the deficient amount of Rs. 3,93,30,260/- (Rs. 4,54,30,260/- minus Rs. 61,00,000/-) along with interest @6% from July 2018 when the project was handed over to the RWA."

Keeping in view the above observations, the respondent-promoter is directed to hand over deficit IFMS amount of Rs. 3,93,30,260/- (Rs. 4,54,30,260/- minus Rs. 61,00,000/-) along with interest @6% from July 2018 till date of actual handing over the amount.

2. Another grievance of the RWA is regarding removal of high-tension line of 33KV passing over swimming pool. Authority vide order dated 11.08.2021 made the following observations with regard to this issue:

“The complainant was directed to get the estimate of expenses prepared for shifting of high-tension line and the association has today produced the demand letter prepared by DHBVN indicating that a sum of Rs. 4,76,215/- is required to be deposited by the respondent for shifting 33 KV lines. So, the respondent is directed to deposit the said amount of Rs. 4,76,215/- before the concerned authority within 10 days from uploading of the order and a follow-up action report be also placed on record by concerned SDO before next date of hearing.”

Complainant apprised the Authority that the respondent has failed to deposit the said amount of Rs. 4,76,215/- before concerned authority as per orders of the Authority. Thus, the respondent-promoter is directed to abide by the above observations of the Authority and accordingly, an amount of

Rs.4,76,215/- be deposited immediately before the concerned authority for removal of high-tension line of 33KV passing over swimming pool.

3. Next grievance of RWA was about non-obtaining of occupation certificate by the promoter in respect of four towers of his project. This issue was resolved by the Authority vide order dated 10.12.2020 with following observations:

“As far as issue of handing over of apartments of those blocks where occupation certificate has not been granted are concerned, in this regard, learned counsel of the respondent/promoter apprises that Environmental Authority while giving clearance to their project inadvertently gave wrong figure of total built up area and now, they are pursuing the matter with concerned department. In this regard, complainant raise an objection that only eight towers have been granted occupation certificate in first phase and remaining towers are without any occupation certificate and allottees of such towers are entitled to get possession with payment of delay interest as and when occupation certificate stands granted. Such interest is to be calculated from the deemed date of possession to actual date of handing over of possession after obtaining of occupation certificate by the respondent-promoter. Authority accepted the

pleading of complainants that they are entitled to get delay interest on the date of handing over of possession from the deemed date of possession as per Rule 15 of rules, 2017. In case, any of the allottee has taken possession of his booked apartment where occupation certificate has not been granted then he is also entitled to claim such delay interest for the period of deemed date of possession to actual date of possession.”

Thus, the respondent-promoter is directed to comply with the above directions of the Authority on obtaining of occupation certificate with respect to remaining four towers of the project.

4. Another issue raised by the complainant is that the respondent is holding possession of unsold units in the project which comprises of 60 normal apartments and 40 EWS apartments, but is not paying maintenance charges to the RWA in respect of those units. Ld. counsel for the respondent without disputing that his client owes a duty to pay maintenance charges to RWA from the date common areas and maintenance were handed over to RWA, urged the Authority to persuade the RWA that lesser amount of maintenance charges should be levied on vacant apartments for the reason that the unsold units are not being used and not causing any additional burden on the RWA. Authority vide order dated 11.08.2021 made the following observations with regard to this issue:



“The Authority is of the opinion that it has no jurisdiction to issue any direction to RWA in respect of the rates to be charged for maintenance. However, Sh. Kanwar Singh, President of the RWA has agreed to provide a concession of 25% on the total amount charged from the respondent at the rate on which the maintenance is being paid by the allottees of the project. Therefore, the respondent is directed to deposit the outstanding maintenance charges to be calculated as per the above offered concession by next date of hearing.

At this stage, respondent's ld. counsel has submitted that some allottees of the project were in arrears of maintenance charges for the period when the respondent was maintaining the project and their total outstanding amount stands at Rs. 83,15,038/-. Said amount along with accrued interest, argued the ld. counsel, shall be allowed to be deducted from the maintenance charges payable to the RWA. The argument is not acceptable because the individual liability of defaulting allottees cannot be set-off against the amount payable to the RWA. The promoter for recovery of the outstanding amount of defaulter allottees needs to seek legal redressal as per law. So, the respondent's plea is



rejected regarding adjustment of amount of Rs. 83,15,038/- towards his liability to pay maintenance charges to the RWA."

Thus, the respondent-promoter is directed to pay maintenance charges to RWA from the date common areas and maintenance was handed over to RWA as per the above observations of the Authority.


5. Last issue raised by the RWA is that the respondent is duty bound to give two more generator sets because he has already collected money for the same 4-5 years back. The Authority vide order dated 01.04.2021 had directed the respondent to install remaining gensets also. However, on last date of hearing, ld. counsel for the respondent stated that one genset has already been installed and second genset would be installed at the earliest. So, the Authority directs the respondent to provide the remaining genset, if still not provided by the respondent.

6. Further, ld. counsel for the respondent today informed the Authority that he has filed a Civil Writ Petition No. 20607 of 2021 before Hon'ble Punjab and Haryana High Court against order dated 11.08.2021 of this Authority. However, the matter is yet to be listed and at present, no order has been passed by Hon'ble High Court.

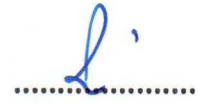
7. Since all the issues have already been heard and decided at length by the Authority, case is **disposed of** in the above terms, with a direction to both



parties to comply with order of the Authority within 45 days of uploading of the order on website of the Authority. Order be uploaded on website of the Authority and file be consigned to record room.



.....
RAJAN GUPTA
[CHAIRMAN]



.....
DILBAG SINGH SIHAG
[MEMBER]

