

**BEFORE THE SOUTH MUMBAI DISTRICT CONSUMER
DISPUTES REDRESSAL FORUM,**

**Puravatha Bhavan, 1st Floor, General Nagesh Marg, Near Mahatma
Gandhi Hospital, Opp. M.D. College, Parel, Mumbai – 400 012.**

O.No.

Complaint No.SMF/MUM/CC/154/2010

Date of filing : 27/04/2010

Date of Order: 11/10/2018

1. Industry Manor Condominium
represented by the Vice President &
Secretary Mr. Sanjay Samani & Mr. Bimal
Mehta,
442-A, Appasaheb Marathe Marg,
Prabhadevi, Worli,
Mumbai- 400 025.
- 2.M/s. Greaves Cotton Ltd.,
Gala No. 1A
- 3 M/s. M.J. Banquet Pvt.Ltd.,
Galat No. 1B/1,
4. M/s. J.K. Banquet Pvt.Ltd.,
Gala No. 1B/2,
5. M/s. Walchandnagar Industries Ltd.,
Gala No.2B
- 6.M/s. Vakil & Sons Pvt.Ltd.,
Gala No. 3A & 3B
7. M/s. Aanchal Apparels Pvt.Ltd.,
Gala No. 4A

8. M/s. Dynamic Design & Systems
Pvt.Ltd., Gala No. 4B/1 & 2,

9. M/s. Royal Systems & Method Pvt.Ltd.,
Gala No.4B/3

10. M/s. Invision Project Pvt.Ltd., Gala
No. 4B/4,

Complainant Nos. 2 to 10 have their
address at : 442-A, Appasaheb Marathe
Marg, Prabhadevi, Worli,
Mumbai- 400 025.

COMPLAINANTS

Versus

1. Nomanbhai Teherally Bandukwalla
C/o. Tahir Arm Stores, 333 Abdul
Rehman Street, Mumbai – 400 003.

2. Mohammedbhai Taherally Bandukwala
C/o. Tahir Arm Stores, 333 Abdul
Rehman Street, Mumbai 400003

3. Mrs Quahera Firoz Bhagat By her C A
Suhailbhai H Bandukwala,
R/at Brahma Majestic Building No B6
Flat No 403 4th Floor N I B M Road
Kondava Pune 411 048

4. Mrs Farida Moayyed Boxwala By her C
A Suhailbhai H Bandukwala
R /at 10 Bhaweshwar Darshan 2nd Floor
31 D Peddar Road Mumbai 400036

5. Mrs Niloufer Najmuddin Dohadwala
By her C A Suhailbhai H Bandukwala
C/o. Tahir Arm Stores 333 Abdul Rehman
Street Mumbai 400003

6. Mrs Fatemabai M Bandukwala By her
C A Suhailbhai H Bandukwala By her C
A Suhailbhai H Bandukwala
C o Tahir Arm Stores 333 Abdul Rehman
Street Mumbai 400003

7. Mrs Fatemabai M Bandukwala By her
C A Suhailbhai H Bandukwala
C o BAMA Sales Organization 200
Janjiker Street Mumbai 400003

8. Abdullabhnai M Moonim
C o Abdullabhai Faizullbhoy Pvt Ltd 60/
62 Sarang Street Mumbai 400003 Room
No 5 1st Floor 327 Abdul Rehman Street
Mumbai 400003

9. Shabbirbhai M Moonim
C/ o Abdullabhai Faizullbhoy Pvt Ltd 60
62 Sarang Street Mumbai 4000003

10. Saifuddin M Moonim
C /o Abdullabhai Faizullbhoy Pvt Ltd 60/
62 Sarang Street Mumbai 400003 Room
No 5 1st Floor 327 Abdul Rehman Street
Mumbai 400003

11. Hakimbhai H Bandukwala By C A
Suhailbhai H Bandukwala, Tahir Arm
Stores, 333 Abdul Rehman Street,Mumbai
400003

12. Nazirbhai H. Bandukwala, By C A
Suhailbhai H Bandukwala, Tahir Arm
Stores, 333 Abdul Rehman Street,Mumbai
400003. **(Expired & deleted)**

13.Suhailbhai H Bandukwala
C o Tahir Arm Stores 333 Abdul Rehman

Street Mumbai 400003

14. Hanif Abbasbhai Bandukwala

C o Basons Almas Manzil Show Room
No 5 1st Floor 327 Abdul Rehman Street
Mumbai 400003

15. Mrs Mumtaz Zakir Molai By her C A
Hanif Abbasbhai Bandukwala

C/o Basons Almas Manzil Show Room
No 5, 1st Floor, 327 Abdul Rehman Street
Mumbai 400003

16. Mrs Jabeen Mehboob Shukla By her C
A Hanif Abbasbhai Bandukwala

C o Basons Almas Manzil Show Room
No 5 1st floor 327 Abdul Rehman Street
Mumbai 400003

17. Mrs Suraiya N Bandukwala By her C
A Suhailbhai H Bandukwala

C o Tahir Arm Stores 333 Abdul Rehman
Street Mumbai 400003

18. Mrs Rumana N Bandukwala By her C
A Suhailbhai H Bandukwala

C/o. Tahir Arm Stores 333 Abdul Rehman
Street Mumbai 400003.

19. Mrs, Sabera H Handy By her C A
Suhailbhai H Bandukwala

C/o Tahir Arm Stores 333 Abdul Rehman
Street Mumbai 400003

20. Mrs Zahaida T Bahrainwala By her C
A Suhailbhai H Bandukwala

C/o Tahir Arm Stores 333 Abdul Rehman
Street Mumbai 400003.

...OPPOSITE PARTIES

Coram:**Smt. Sneha S. Mhatre : Hon'ble President****Shri. D.S. Paradkar : Hon'ble Member****Shri. M.P. Kasar : Hon'ble Member****Appearance:****For Complainant - Adv. Shri. Uday Wavikar****Opposite Party Nos. 1 to 11 & 13 to 20 - Anil Sampat & Tushar
Goradia****Opposite Party No. 12 (Original) - Expired on 14/02/2010
Mr. Nazir Hatim Bandukwala Deleted from the complaint by an
amendment dtd. 22/11/2010****// JUDGMENT//****(DTD. 11/10/2018)****PER SMT. SNEHA S. MHATRE – HON'BLE PRESIDENT**

[1] The present complaint is filed by the Complainants against the Opposite Parties for non-compliance of their statutory obligations and thereby committing deficiency in service and unfair trade practices. The Opposite Parties are the joint owners builders and developers of the land bearing City Survey No.1039 (Part- II) situated at Chowni Gulli off Cadell Road at Prabhadevi, Mumbai. As per the order of the Forum Dt. 01/08/2017, the Complainant has carried out necessary amendment in

the complaint as well as cause title and in the prayer clause of this complaint. The said order of amendment is not challenged by the Opposite Parties.

[2] The builders have constructed on the said land the building known as “Industry Manor” consisting of Industrial Galas, comprising of ground floor and three upper floors, having a total built up area of 6465.2 sq.mtrs. together with a terrace of 1723.42 sq.mtrs., parking space and other open areas. The Complainants are the individual owners in terms of the diverse deed of apartments executed with the Opposite Parties in furtherance of declaration envisage U/Sec. 2 of The Maharashtra Apartment Ownership Act, 1970.

[3] Builder submitted the said building “Industry Manor” to the provisions of The Maharashtra Apartment Ownership Act, 1970 and U/Sec. 2 of the said Act executed the declaration on 26/04/2001 and the Complainant NO.1 herein, Industry Manor Condominium was registered on 02/05/2001 under Sr. No. BBE-1/2392/2001 with Sub. Registrar of Co. Operative Societies. Complainants have stated that the

Opposite Parties have sold and entered into agreement / Deed of Apartment with the various unit purchasers on ownership basis and put them in possession of their respective units after receiving the entire consideration in respect thereof and on the terms and conditions set out in the said Agreements.

[4] Complainants stated that Opposite Parties have failed and neglected to convey the said property in the name of the complainant, and has put the complainant in possession by accepting consideration in terms of individual deed of Apartment executed with the Opposite Parties but has not delivered physical possession by transfer of the rights title and interest in the units and the land on which, the Building of Industry Manor Condominium has been constructed alongwith open space, parking, the common areas and facilities the terrace above the building etc. and not yet made necessary entries / corrections in the property cards in favour of the Complainants which amounts to deficiency in service. Complainants have further stated that the Opposite Parties are the co-owners of the unit No. 2A of the said Society

and the Opposite Parties have not contributed towards the repairs and maintenance in proportionate to their share for the said Unit No. 2A, hence Rs. 3,08,715/- are outstanding against the names of the Opposite Parties. Complainants have further stated that though the common areas and terrace belongs to the Industry Manor Condominium, Opposite Parties are using the common space i.e. compound and terrace of it and have put four hoardings i.e three at compound and one on the terrace, and without contributing towards the repairs of the terrace, the Opposite Parties are using the said place of compound as well as terrace for these four hoardings of M/s. Advance Advertisers, & income earned from it is exclusively appropriated by the Opposite Parties and they are not giving its Account to the Condominium nor transferred the contracts entered into by them with M/s. Advance Advertisers for the hoardings to the Complainants Condominium. Complainants have stated that the Opposite Parties have not handed over despite of repeated requests original / certified true copies of documents required by the Condominium. (Specifically mentioned as per the list given in the para No. 9 of amended complaint.) Thus for the non compliance of statutory

obligations and for the deficiency in service and unfair trade practice, the Complainants have filed the present complaint for which, by a Resolution dtd. 08/03/2010, the Authority is given to its office bearers of the Condominium to file the present complaint. As per the order of the Forum, the prayer clause No. 15-B & 15-E are amended by the Complainants. The Complainants have prayed for the reliefs mentioned in the prayer clause No. 15A to 15H of this complaint against the Opposite Parties. Out of total 20 Opposite Parties, one Opposite Party at Sr.No. 12 namely, Nazirbhai H. Bandukwala is expired, hence, his name is deleted from the complaint and the cause-title as per the order of the Forum dtd. 22/11/2010.

[5] The Opposite Parties have filed their written statements and have raised objections about the jurisdiction of the Forum stating that provisions of MOFA Act are not applicable to the facts and circumstances of the above complaint. Complainants are not covered under the definition and meaning of Consumer. Complainant cannot recover the amount from Opposite Parties towards the outstanding

repairs and maintenance charges by filing present complaint. The Opposite Parties have stated that the complaint is barred by limitation and Complainants have filed it to harass the Opposite Parties and to extract money from them and has prayed for its dismissal.

[6] Both the parties have filed their respective affidavit of evidence and written arguments as well as have produced some necessary documents on record.

[7] Heard Advocates of both the parties and on perusal of the necessary documents filed by both parties, the following issues are framed / points are considered for the redressal of the grievance.

Sr.No.	Points	Answers
1.	Whether the Complainants are consumers	yes.
2.	Is the complaint maintainable?	yes.
3.	Is the present complaint involves element of commercial purpose?	No.
4.	Is the complaint suffers from limitation U/sec. 24A of CP Act?	No.
5	Have the Complainants proved that the Opposite Parties have committed deficiency in service towards the Complainant?	Yes.
6	Are the Complainants entitled to get their	Yes.

	names incorporated by the Opposite Parties on the property cards?	
7	Are the Complainants entitled for the conveyance of the property i.e. common space as well as terrace of the said building to be transferred in the name of Industry Manor Condominium?	Yes.
8	Is the Industry Manor Condominium entitled for the terrace and open space including hoarding situated in Terrace and open space to be delivered in its name by Opposite Parties ?	Yes.
9	Is the Industry Manor Condominium entitled for the deposit of the monies to it's Account from the Opposite Parties which is received by the opposite parties in respect of the hoardings as stated in the final order?	Yes.
10	Are the Complainants entitled to receive the original documents / certified copies mentioned in the order from the Opposite Parties?	Yes.
11	Are the Complainants sr.no.2 to 10 are entitled for the compensation for mental torture from the Opposite Parties?	Yes.
12	Are all the Complainants entitled to receive the litigation costs from the Opposite Parties collectively?	Yes.
13	What order ?	As per final order.

Reasoning :-

[8] **Point Nos. 1 to 13** :- Complainant No. 1 is Industry Manor Condominium and Complainant Nos. 2 to 10 are individual owners in terms of the diverse deed of Apartments executed with the Opposite Parties in furtherance of the declaration envisage U/Sec. 2 of The Maharashtra Apartment Ownership Act, 1970. The Opposite Parties are the joint owners and builders and developers of the land bearing City Survey No. 1039 Part II situated at Chowni Gulli Off Cadell Road, at Prabhadevi, Mumbai. The Opposite Parties have constructed on the said land a building known as Industry Manor consisting of Industrial Galas comprising of ground floor and three uppers floors having total built up area of 6465.2 sq.mtrs. together with a terrace 1723.42 sq.mtrs. parking space and other open areas.

[9] The said builders / Opposite Parties submitted said building Industry Manor to the provisions of The Maharashtra Apartment Ownership Act, 1970 and U/Sec. 2 of the said Act executed the declaration on 26/04/2001 and Complainant Society was registered on 02/5/2001 under Sr.No. BBE-12392/2001 with the Sub. Registrar of

Co.Op. Societies. The said Complainants i.e. individual unit / apartment owners are the members of Industry Manor Condominium.

[10] Condominium means the Condominium of all the unit owners constituted by such owners for the purpose of the Industry Manor Condominium. As per the Bye-laws of the Condominium, in Chapter 1 objects of Condominium are stated in part (IV)-1(h) & (i) as to do all acts, deeds and things necessary for the benefit of the unit owners and to other wise provide for the welfare and / or other purposes expedient for the attainment of the objects specified in the Bye-laws, means Condominium is an association of persons / owners / unit holders who have formed it for the welfare of its members. In C.P. Act, 1986 right to make complaint is given to :-

- (1) A consumer,
- (2) Any voluntary consumer association registered under Companies Act, 1956 or under any Law for the time being inforce (or)
- (3) The Central Government or State Government who or which makes a complaint or
- (4) one or more consumers on behalf of group of consumers

having the same interest or (5) the original consumer having being dead his legal heirs or representatives.

- (2) As per Section 2(1)m of Consumer protection Act,1986 “Person , includes- i)a firm whether registered or not, ii) a hindu undivided family, iii)a co.operative society , iv) every other association of persons whether registered under the societies Registration Act, or not; thus, any Association of persons whether registered under the Societies /Companies Registration Act or not is deemed to be a person within the meaning of Section 2 (1) (m) of Consumer Protection Act.

[11] The concept of Association of persons and the Association of individuals help to clarify the meaning of term Association, “An individual can only be a natural person whereas : A person in law may be both a natural person as well as a legal person by a fiction. Consequently, a consumer under Consumer Protection Act need not necessarily be an individual nor a legal person such as, Company under Company’s Act but a body of any persons bound together by a common

purpose can be said to form an association if they are acting jointly in pursuance of common purpose.

[12] In the present complaint, Complainant No. 1 Condominium of Industry Manor being an Association of person which includes juristic persons like Pvt.Ltd. Companies are the Complainants as well as consumers, as the individual unit holders of the said Industry Manor have executed Deed of Apartment as well as Declaration with the Opposite Parties as per Bye-law of the said Society/Condominium and after payment of consideration amount which is specifically mentioned in the Clause No. 14 of each unit holders/purchasers Deed Of Apartment, to the Opposite Parties for purchase of their respective units, have been given possession of their individual units, which is also admitted by the Opposite Parties in their written statements, & in this complaint tenancy is converted to ownership by executing specific deed of Apartment with individual unit purchasers.

[13] As per Hon'ble State Commission's order passed in A/15/719 arisen out of order dtd. 18/04/2015 passed in CC/36/2011 of

South Mumbai Forum, it is observed that even a Private Limited Companies are the consumers and are covered under the purview of the CP Act, 1986. Same view is taken in Karnataka Power Transmission Corporation & Others V/s. Ashok Iron Works Pvt. Ltd. 2009 Rs. 3-S.C..

[14] In case of Jayam Impex V/s. Hiteshbhai Gokalbhai Maru,(N.C. New Delhi, , Rev Petition No.4529/2014) it is observed that if a person while using the goods for himself which is purchased by him also takes assistance of one or more other persons, while using such goods purchased by him, he would still remains a consumer.

[15] Thus, in the present complaint though some of the Complainants are Pvt.Ltd. Companies or industrial galas which are owned by its proprietor/individual owners who are carrying small scale business with the assistance of one or more persons in it for their self employment, they are still remains the consumers, & Opposite Parties have not produced on record any documentary evidence to prove that the activities or business which are carried in such industrial galas by the Complainants are of large scale business & not for earning livelihood or

not for self employment of it's owners; who have purchased their individual units by executing Deed of Apartment on payment of lump sum consideration to the Opposite Parties which is specifically mentioned in their respective Deed of Apartments, in Clause No. 14 or in their respect clause numbers pertaining to the considerations paid for purchase of their Galas/Units to the Opposite Parties.

[16] Thus, the Complainants are the consumers of the Opposite Parties.

In the MOFA Act meaning of the promoter is as follows :-

Promoter- “which also includes a person who constructs and sells the premises/flats/units to his purchasers. Thus, by the plain reading of the definition of promoter, all the persons who are involved in the activity of construction & selling of the flats, units, industrial galas etc. are covered under the purview of ‘Promoter’.

[17] Opposite Parties have admitted that they are the builders & developers who have constructed the said building Industry Manor & have sold the individual units to the respective unit holders by executing the Deed of Apartment in consideration of amount specifically mentioned therein, which was fixed between the individual unit purchaser & parties & the Condominium is association of persons who forms it for the welfare of all the members of the Condominium ,in the present complaint, the tenancy right is converted into ownership by developing the said land and by constructing building Industry Manor on the said land by the opposite parties and thereafter the units/ galas which are constructed in the said building are sold for the consideration to the unit holders/ complainants by the opposite parties, hence all the provisions of MOFA Act are applicable to the present complaint.

Case Law :- High Court of Judicature at Bombay FA No. 786/2004 with FA/989/2004 **Madhuvihar Co.Op. Housing Society** V/s. **M/s.**

Jayantilal Investments :-

It is observed that Sec. 11 of MOFA reads

“Promoter to convey title etc. & execute documents according to Agreement – (1) (A) :-

*‘Promoter shall take all necessary steps to complete his title and convey to the organization of persons, who take flats, which is registered either as a co-operative society or as a Company as aforesaid or to an association of flat takers or **apartment owners** his right, title and interest in land and building & execute all relevant documents therefore in accordance with the agreement executed under Section 4 and if no period for the execution of the conveyance is agreed upon he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.*

In Rule 9 – It is stated that ‘period for conveyance of title & promoter to organization of flat purchasers, if no period for conveying the title of the promoter to the organization of flat purchasers is agreed upon the Promoter shall execute the conveyance within 4 months from the date on which the Co-Operative Society or the Company is

registered or as the case may be the association of flat takers is duly constituted. (in present case condominium of unit holders/gala holders) Hence are covered under the purview of the term Promoter.

Same observations are recorded by the Hon'ble State Commission in FA No. A/11/578 (Arisen out of order dtd. 09/05/2011 in complaint No. 28 of 2008)

Meher Manzil Co.Op. Housing Society Ltd. V/s. M/s. Emzed Corporation & Others. It is observed that MOFA is obviously intended to deal with mischief which was committed by exploitation which may be indirectly done by the promoter. Thus, MOFA does restrict the right of promoter in the block of building constructed for flats or to be constructed to which this act applies.

[18] Considering the restrictions upon the Promoter if any, provision is included in the Agreement which may offend for exploiting the flat purchasers, which need to be discarded, as the ownership of the land and building has to be conveyed to the Co.Op. Housing Society constituted by flat purchasers (In present case conveyed to the Industry

Manor Condominium) & the builder / developers and owner of the land have no choice but statutory obligation to convey the property including land open building terrace to the society under registered conveyance deed which shall be in accordance with the provisions of MOFA and rules framed thereunder. **Moreover, Sec. 3 of the Consumer Protection Act it is specifically stated that, the provisions of the Consumer protection act shall be in addition and not in derogation of provisions of any other law for the time being in force.,** which means even though the complainants are the members of Industry Manor Condominium and are individual owner/ unit holders of the galas /units purchased from the opposite parties on payment of consideration amount specifically mentioned in the Deed of Apartment to opposite parties and declaration as per the provisions of The Maharashtra Apartment Ownership act 1970, as per Clause J of the said Declaration, it is stated that opposite parties agreed to sell, on what is known as ownership basis, the different units comprised in the said building namely industrial galas and open car parking units and it was contemplated by the Grantors that ultimately the entire said property viz the said land together with the said

building named “INDUSTRY MANOR” (hereinafter collectively referred to as “the said property”). Here particularly described in the sub-paragraph F below would be submitted to the provisions of the Maharashtra Apartment Ownership Act, 1970 and the Rules made there under and the Deed of Apartment/Unit in respect of the different units in the said building would be executed in favour of the respective purchasers of such respective unit/s in the said building.

[19] Thus, the complainants can not be restricted from invoking the provisions of Mofa Act, which covers promoters/builders and developers who construct and sells units/ flats /galas in it, to various purchasers.

In para 24 of written statement the Opposite Parties have admitted that they are ready to comply their statutory obligations towards the complainants means the Opposite Parties have not yet complied their statutory obligations towards the Complainants by conveying the land & terrace in the name of Industry Manor Condominium nor transferred the names of the individual units holders / purchases in their respective property cards despite of repeated requests made by the

Complainant for the same. Thus, Opposite Parties have committed deficiency in service by noncompliance of the statutory obligations towards the Complainants. The Opposite Parties in their written statement & correspondence exchanged with the Complainants have admitted that they are ready to comply the statutory obligations As per **Section 6 of Apartment of Ownership Act, 1970** each Apartment Owner is entitled to the common areas in percentage expressed in a Deed Of Declaration/deed of apartment which reads as follows -

Common areas and facilities-

(1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration. Such percentage shall be computed by taking as a basis the value of the apartment in relation to the value of the property; and such percentage shall reflect the limited common areas and facilities.

(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expected in the Declaration shall have a permanent character, and shall not be altered without the consent of all

of the apartment owners expressed in an amended Declaration duly executed and registered as provided in this Act. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains, and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or other instrument.

(3) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this Act as provided in Section 14 & 22. Any covenant to the contrary shall be null and void.

(4) Each apartment owner may use the common areas and facilities in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners.

[20] The cause of action in the present case has arisen on 02/05/2001, when the Complainant Condominium was registered with the Sub. Registrar of Co.Op. Societies and the Opposite Parties have failed and neglected to comply with their statutory obligations under MOFA therefore, the cause of action is continuous and the complaint is not barred by limitation. Office of the Opposite Parties and the addresses of the Opposite Parties which are mentioned in the cause title of the present complaint falls within the territorial jurisdiction of this Forum as well as Complainants have claimed Rs4,58,715/- from the Opposite Parties hence it is within the pecuniary jurisdiction of this Fora & the present complaint is within the Forum's jurisdiction and it is maintainable.

[21] Opposite Parties have by a letter dtd. 15/01/2010 given consent to M/s. Advance Advertiser, Borivli West as per Agreement dtd. 01/01/2008 to carry out necessary work on the hoarding in Complainant's building in which, it is stated that the said consent is given to the work on hoarding whenever required from time to time

(Page 117) & the Opposite Parties are using the compound and terrace of the Complainant's building for those hoardings of M/s. Advance Advertiser & earning huge income from it and this is done without the individual consent of the owners / unit holders who are owner of the common land and terrace as well in proportion to the percentage of share held by them as mentioned in their agreement and as per the Clause No. 6 of The Maharashtra Apartment Ownership Act, 1970, thus **though the three hoardings which are fixed on the compound and one at terrace of the said building which might have been put at some height it is occupying the portion of land of the compound as well as of the terrace which is covered under it.** Complainants have raised objections for it and have asked the Opposite Parties to hand over the said open space to the Complainant's Condominium but the Opposite Parties have not co. operated with the Complainant as well as without making payment for the repairs and maintenance of terrace for the unit No. 2A of which the Opposite Parties are co-owners and against the said unit, Rs. 3,08,715/- are yet to be paid by the Opposite Parties to the Industry Manor Condominium as per the Bills produced by the

Complainants on record on account of repairs and maintenance of the terrace of the said building and the Opposite Parties are using the said terrace of the building for display of the hoardings of M/s. Advance Advertiser at the cost of the Complainants, hence, it is unethical as well as illegal act committed by the Opposite Parties, hence, the Opposite Parties are directed to pay Rs. 3,08,715/- to the Industry Manor Condominium & as the common areas and terrace belongs to the Industry Manor Condominium & the Opposite Parties are illegally using the common areas and terrace by fixing hoardings on it of M/s. Advance Advertisers, the copy of the permission granted by the Builder to the said M/s. Advance Advertisers for installation of hoardings in the compound and terrace of the Industry Manor Condominium is annexed at Exh.C-5 of the complaint. Builder has not given the details or accounts of the income earned by them through these hoardings which are allowed to be fixed on the common space compound and terrace of the said building without consent of the Condominium or its unit holders, hence the Opposite Parties are directed to transfer the contract entered into by them with M/s. Advance Advertisers for these hoardings

to the Complainants Condominium and to pay the income earned from it from the Opposite Parties to the Complainants Condominium, who are the real owners of the said property as specifically mentioned and directed in the final order of this complaint. Hence the Opposite Parties are directed to deliver physical possession of the terrace & open spaces of Industry Manor Condominium i.e. the complainant No.1, including the hoardings situated in its terrace and open spaces, within a period of two months from the date of this order.

Case referred :- Hon'ble State Commission in FA No. A/11/578 (Arisen out of order dtd. 09/05/2011 in complaint No. 28 of 2008) in the matter of **Meher Manzil Co.Op. Housing Society Ltd.** V/s. **M/s. Emzed Corporation & Others.**

[22] The Opposite Parties have not complied their statutory obligations to transfer the land on which the building of Industry Manor Condominium has been constructed alongwith open space parking the common areas and facilities the terrace above the building etc. in favour of the Condominium and have thus committed deficiency in service

which is admitted by the Opposite Parties, in para 24 of the written statement stating that they are ready and willing to comply the statutory obligations towards the Condominium as well as other Complainants, who are the real owners of the said property, hence the Opposite Parties are directed to execute & register the Deed of Conveyance to transfer the rights title interest in respect of said land alongwith all the common areas / facilities in favour of Complainant's Condominium (as per the schedule of the said property) & as the Opposite Parties have not yet taken necessary steps to carry out necessary entries / corrections in the property cards in favour of the individual Complainants (sr. no.2 to 10) and failed to convey & hand over the physical possession of their respective units by making the necessary entries / corrections in the property card of the unit holders hence, the Opposite Parties are directed to carry out the mutation entries with the City Survey Authorities & take necessary steps to enter the names of individual apartment owners in the property card by making necessary entries / corrections in the property cards in favour of the Complainants within a period of two months from the date of this order.

[23] As per the Bye-laws of the said Industry Manor Condominium, Rule 10 reads about the common profits and expenses, the common profits of the property shall be distributed among and the common expenses shall be charged to the Apartment owners according to the percentage of the undivided interest in the common areas and facilities which includes expenses of administration maintenance repair or replacement of common areas and facilities expenses agreed upon as common expenses by the Association of Apartment owners. Thus, as per the bills produced on record by the Complainants, the Opposite Parties are co.owners pertaining to the unit holder No.2A of the Condominium for which, Rs. 3,08,715/- are outstanding till filing of this case towards the repairing of the terrace and **at the cost of the other co.owners, the Opposite Parties are enjoying the benefit of the terrace & earning huge income which is exclusively appropriated by the Opposite Parties.** The advocate for the complainants argued that the building of the Complainants is very old & now in a dilapidated condition, the Opposite Parties have denied the said liability towards the Condominium pertaining to their unit No. 2-A but have not produced on

record documentary evidence to substantiate their contentions made in the written statement. Hence the opposite parties are directed to pay to the complainant no.1 the amount outstanding of Rs. 3,08,715/-towards the opposite party's unit no.2A, towards the repairing charges of the terrace of the Industry Manor Condominium, within a period of two months from the date of this order.

[24] The Industry Manor Condominium is registered in 2001 but the Opposite Parties are not conveyed the said land in the name of the Condominium nor handed over the original documents as demanded by the complainants from opposite parties pertaining to the Industry Manor Condominium & taking undue advantage of possession of aforesaid documents to exploit the Complainants. Hence the Opposite Parties are directed to hand over the original documents concerning the construction of the building such as, property card with CTS Plan, set of BMC approved plans, building completion certificate, occupation certificate, N.A. permission issued by the Collector, Condominium Registration Certificate from 7/12, Index- II and all other certificates in

the possession of the Opposite Parties, to the Complainants Condominium within a period of two months from the date of this order.

[25] Condominium is a Association of persons formed under the provisions of The Maharashtra Apartment Ownership Act, 1970 & Complainant Nos. 2 to 10 are the individual unit holders / owners of their respective units as per the Deed of Apartment executed by them with the Opposite Parties for purchase of their unit for the consideration mentioned therein and due to the non-compliance and non-co.operation from the Opposite Parties to comply their statutory obligations stated in the aforesaid paras, the Complainants (Sr. no. 2 to 10) who are the unit holders/owners/ proprietors etc. of their respective units of the said condominium have suffered from the mental torture for which they are entitled for the compensation of Rs.5,000/- each from the Opposite Parties & for filing the present complaint through an Advocate, all the complainants from sr. no.1 to 10 are entitled to receive Rs.20,000/- collectively from the Opposite Parties.

[26] We hold accordingly and pass the following order :-

// ORDER //

[i] CC/154/2010 is partly allowed.

[ii] The Opposite Party **Nazirbhai H. Bandukwala** is expired and deleted from this complaint as per the order of the Forum dtd22/11/2010, hence there is no order against him.

[iii] The Opposite Parties (except Mr. Nazirbhai H. Bandukwala) are declared guilty of deficiency in service towards the Complainants.

[iv] The Opposite Parties are directed to carry out the mutation entries with the City Survey Authorities & enter the names of the individual apartment owners of the Industry Manor Condominium, in the property card within a period of two months from the date of this order.

[v] The Opposite Parties are directed to convey the property of land, common space, compound and terrace of the said Industry Manor Condominium building (as per the schedule of the property) situated at land bearing City Survey No.1039 (Part- II) situated at Chowni Gulli off

Cadell Road at Prabhadevi, Mumbai in the name of Industry Manor Condominium & the Opposite Parties shall deliver physical possession of the terrace & open spaces of Industry Manor Condominium to the complainant No.1, including the hoardings situated in its terrace and open spaces, within a period of two months from the date of this order.

[vi] The Opposite Parties are jointly and severally within 2 months , from the date of this order shall deposit monies received by the opposite parties in respect of the 4 hoardings, fixed on the common compound and terrace of the Industry Manor condominium, in the Account maintained by the Industry Manor Condominium, and the calculation of the said amount received from hoardings by the opposite parties is to be done from the date of filing of this complaint till such time the terrace is handed over along with the accounts of the hoardings as stated above and mutation entries are made for with the registrar of properties in the name of society, by the opposite parties.

[vii] The Opposite Parties are jointly & severally directed to pay Rs. 5,000/- each to the Complainants (Sr.no.2 to 10) for the compensation

for the mental torture and Rs.20,000/- collectively to all the Complainants (sr no.1 to 10) towards the litigation costs within the period of two months from the date of this order.

[viii] The Opposite Parties are directed to pay Rs. 3,08,715/- to the Industry Manor Condominium towards the outstanding repair charges for the repairing of the terrace of the said building, within the period of two months from the date of this order.

[ix] The Opposite Parties are directed to hand over all the relevant original documents concerning the construction of the building such as, property card with CTS Plan, set of BMC approved plans, building completion certificate, occupation certificate, N.A. permission issued by the Collector, Condominium Registration Certificate from 7/12, Index-II and all other certificates in the possession of the Opposite Parties, to the Complainants Condominium within a period of two months from the date of this order.

[x] Compliance of the said order is to be done by the Opposite Party within a period of two months from the date of this order.

[xi] Certified copy of this order be sent to both the parties free of costs.

Pronounced on : 11/10/2018

Place : South Mumbai

sd/-xxx

sd/-xxx

sd/-xxx

(Shri.M.P.Kasar) (Shri.D.S.Paradkar) (Smt. Sneha S. Mhatre)

Hon'ble Member

Hon'ble Member

Hon'ble President

Note:- As the pleadings, affidavit, documents, written notes of arguments are in English, the order in the proceeding is passed for the better knowledge of the parties in English.

vns