

## **S/N 11/2022 – Failure to Verify Total Floor Area of Property**

### **Facts of Case**

In February 2021, the Respondent was engaged by the Sellers of a Housing and Development Board (“HDB”) flat (the “Flat”) to sell the Flat. The Respondent proceeded to post an advertisement (the “Advertisement”) online to market the Flat for sale.

The Advertisement posted by the Respondent described the floor area of the Flat as “93 sqm/1001 sqft” (i.e. 1,001 square feet (“sqft”)), and with an asking sale price of \$418,000. The advertised floor area was different from what was set out in the “Intent to Sell” (“ITS”) for the Flat, which provided a floor area of 89 square metres (“sqm”) (about 958 sqft) instead. In posting the Advertisement, the Respondent had added a recess area of 4 sqm to the floor area of the Flat, which the Sellers had purchased in 2011 from HDB.

The Respondent did not take any steps to verify the Flat’s represented floor area of 93 sqm in the Advertisement, prior to posting the Advertisement or at any material time thereafter. The Respondent also did not take any steps and/or exercise any due diligence to verify the floor area of the Flat, such as conducting searches on Singapore Land Authority’s Integrated Land Information Service (“INLIS”) or making enquiries with HDB.

A prospective buyer (the “Buyer”) subsequently came across the Advertisement posted by the Respondent. The Buyer was looking to purchase a 4-room HDB flat with a floor area of at least 1,000 sqft. As the description of the Flat in the Advertisement met her criteria, the Buyer contacted the Respondent to arrange for a viewing of the Flat. After the viewing, the Buyer offered to purchase the Flat for \$400,000, which was accepted by the Sellers. At that point in time, the Buyer was under the impression that the floor area of the Flat was as stated in the Advertisement and made her offer for the Flat based on this floor area.

Thereafter, the Respondent prepared an Option to Purchase and the Buyer paid a sum of \$1,000 to the Sellers as the option fee.

In early March 2021, the Buyer received a valuation report for the Flat from HDB, which stated that the value of the Flat was \$375,000, and with a floor area of 89 sqm. According to the Buyer and her husband, they were shocked by the significant Cash Over Valuation (“COV”) sum of \$25,000 and did not notice the floor area stated in the valuation report. They approached the Respondent to re-negotiate the sale price; the Respondent told the Buyer that the Sellers were agreeable to a sale price of \$390,000 instead, to which the Buyer accepted. A fresh (and second) Option to Purchase was issued by the Sellers for the sale of the Flat.

On or around 30 March 2021, the Buyer received a second valuation report for the Flat from HDB. The Buyer and her husband then noticed that the floor area of the Flat stated in the valuation report was 89 sqm, and not the advertised floor area of 93 sqm. They proceeded to check with HDB and the valuers, who verified that the total floor area of the Flat was only 89 sqm, inclusive of the recess area. According to the Buyer and Tommy, they pointed out the size difference to the Respondent, who claimed that the size difference had already been factored into the reduced sale price of the Flat.

**Note:** This case was referred to a CEA Disciplinary Committee (DC) after the operationalisation of the Estate Agents (Amendment) Act 2020 on 30 July 2021. With the Act amendments, the maximum financial penalty for disciplinary breaches has been raised and a DC can impose a higher financial penalty on errant offenders.

Although the Buyer had only wanted to purchase a property with a floor area of at least 1,000 sqf, she eventually decided to go ahead with the purchase of the Flat at the sale price of \$390,000 as they were expecting a child in September 2021 and did not want to spend more time searching for another property. However, the Buyer would not have even shortlisted the Flat for viewing or considered purchasing the Flat to begin with if the Respondent had accurately advertised the floor area of the Flat in his Advertisement.

For the resale transaction, the Respondent received a sum of \$180 as his share of commission.

## **Charges**

The Respondent faced the following 2 charges:

### **Charge 1 (Proceeded)**

For failing to conduct his work with due diligence and care, by failing to verify the total floor area of the Flat that he was engaged by the Sellers to sell, in breach of paragraph 5(1) of the Code of Ethics and Professional Client Care (the “Code”).

### **Charge 2**

For causing the Advertisement to be made that contained a representation, claim or information that was inaccurate and/or misleading, by stating in the Advertisement that the floor area of the Flat was “93 sqm/1001 sqft”, when in fact the floor area of the Flat was only 89 sqm (or about 958 sqf), in breach of paragraph 12(4)(a) of the Code.

## **Outcome**

Pursuant to a plea bargain, the Respondent pleaded guilty to 1 charge (i.e. Charge 1), while the remaining charge (i.e. Charge 2) was taken into consideration for purposes of sentencing.

In sentencing, the DC noted that the Respondent had failed to appreciate that the ITS, which was an official and recent document, had stated the Flat’s floor area as 89 sqm. The Respondent could have also verified the floor area through INLIS and should have relied on official sources for such an important piece of information.

The DC felt that there was no suggestion of deliberate unethical conduct, dishonesty, or unfairness by the Respondent, who had formed a mistaken impression that the Flat’s floor area was 93 sqm and failed to take due care to verify the information. The DC recognised that the Buyer was misled by the incorrect floor area and had suffered stress, frustration and inconvenience, and had eventually decided to proceed with the purchase after knowing the correct floor area and the COV.

The DC also considered the Respondent’s immediate and open admission of his mistake, his taking of steps to mitigate any loss caused, his early cooperation with CEA and his lack of antecedents.

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Accordingly, the DC imposed the following financial penalty and disciplinary order on the Respondent:

**Charge 1:** A financial penalty of \$3,000 and a suspension of 2 months.

Fixed costs of \$2,000 was also imposed on the Respondent.