

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

Complaint no. : 4252 of 2022
Date of filing : 29.06.2022
Date of decision : 19.11.2024

Nikvin Healthcare India Private Limited
R/o: N-108, Ground Floor, Panchsheel Park, New
Delhi-110017

Complainant

Versus

M/s Sector One Hundred One and thirteen Gatevida
Developers Private Limited
Office at: Plot No. 05, J Block, Community Centre,
Rajouri Garden, Delhi-110027

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Member
Member

APPEARANCE:

Shri Khush Kakra
Shri Sumesh Malhotra and Pawan
Bhardwaj

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 29.06.2022 has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) 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 or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Gurgaon Gateway", Sector 112-113, Gurugram, Haryana
2.	Project area	21.04 acres
3.	Nature of the project	Residential
4.	DTCP license no. and validity status	85 of 2012 dated 29.08.2012 valid up to 06.12.2019
5.	Name of licensee	CSN Estates Pvt. Ltd. and 2 others
6.	RERA Registered/ not registered	Registered vide no. 186 OF 2017 DATED 14.09.2017 valid upto 30.06.2020
7.	Unit no.	C-801, Tower/block- C (Page no. 80 of the complaint)
8.	Unit area admeasuring	2535 sq. ft. (Page no. 80 of the complaint)
9.	Date of booking	28.06.2013 (Page 42 of complaint)
10.	Date of allotment	28.06.2013



		(Page 16 of complaint and Page 73 of complaint) This was allotted in favour of Praveen Kumar Gupta and anr.
11	Sale agreement	15.05.2013 (between the original allottee and subsequent allottee)
12.	Date of Buyer agreement	28.06.2013 (Page 16 of complaint - between builder and both the allottees i.e., subsequent and original) 23.01.2020 (Page 149 of complaint between complainant and respondent)
13.	Date of tripartite agreement	23.01.2020 (Page 13 of complaint)
14.	Due date of possession	November 2017 + 6 month of grace period = May 2018 (No delay in offering possession - this is also accepted by complainant at page 18 of complaint)
15.	Total Sale consideration	Rs. 2,86,42,965/- (Page 11 of complaint) Rs. 2,87,30,449/- (Page 13 of complaint)
16.	Amount Paid	Rs. 2,87,30,449/- (Page 19 of complaint)
17.	Offer of possession	28.11.2017 (Page 132 of complaint) In favour of Mr. Praveen Kumar Gupta

18.	Occupation certificate	30.08.2017 (Page 51 of reply)
19	Allotment in favour of the complainant	13.12.2019 (page 54 of reply)
20.	Transfer of apartment letter	25.02.2019 (Page 12 of complaint) from subsequent allottee to the complainant.
21	Apartment agreement buyer	23.01.2020 (page 149 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -

- i. That the present complaint pertains to a situation whereby the initial allottee namely Mr. Aashish Singhal (hereinafter referred to as the "Initial Allottee") had, in the year 2013, booked a residential unit bearing no. unit bearing number C-801, admeasuring super area of 2535 sq. ft., on the 8th Floor, of Block- C (hereinafter referred to as "Unit") in the project namely "Gurgaon Gateway" situated at Sector-112-113, Village Bajghera, Tehsil and District Gurgaon, Haryana (hereinafter referred to as the "Project" being developed by M/s Lemon Tree Land and Developers Private Limited (now known as Sector 113 Gatevida Developers Private Limited) (hereinafter referred to as "Respondent").
- ii. That, the respondent company made various representations to the initial allottee in order to lure him to book the said residential unit in the project. Subsequently, several meetings were also held between the initial allottee and representatives/directors of the respondent



company wherein many superficial claims were made to the initial allottee with respect to the high-end living experience as the project would be one of its kind and would offer a living experience. Further, the representatives of respondent, showed to the initial allottee, various licenses and approvals received from DTCP, sanction letters, architectural approvals, agreements and tie-ups, brochure of the project which contained graphical representation of the project, flats, clubhouse, recreational area etc. That on the basis of the above-mentioned inducements, the initial allottee booked the unit and made a payment of Rs. 10,00,000/- (Rupees Ten Lacs Only) via the EOI Application no. 004696 dated 23.02.2013.

- iii. That later in the year 2013, the Initial allottee approached the director/authorised signatory of the complainant namely mr. praveen kumar gupta with an intention to transfer the unit. The initial allottee made various representations with respect to the unit which he had received from the respondent company and its representatives. That in pursuance of the above-mentioned inducements, Mr. Praveen Kumar Gupta (hereinafter referred to as the "Subsequent Allottee") decided to purchase the unit from the initial allottee. Thereafter, the initial allottee and the subsequent allottee entered into a sale agreement dated 15.05.2013 which encapsulated the terms of sale and purchase of the unit from the initial allottee to the subsequent allottee at Rs. 10,00,000/-. Subsequently a request letter for deletion of name of the applicant (i.e., Mr. Aashish Singhal) from the name of the unit was applied by the initial allottee.
- iv. That subsequence to the execution of the application form, the respondent company issued an allotment letter in favour of the

- subsequent allottee dated 28.06.2013 allotting the said unit to him. Further the allotment letter also acknowledged the receipt of Rs. 10,00,000/- paid with respect to the sale consideration of the unit.
- v. That consequently, the respondent company executed an agreement to sell (hereinafter referred to as the "agreement") in favour of the subsequent allottee. It must be noted that that by the time the agreement was executed, the subsequent allottee had made a substantial amount of payment of Rs. 44,14,456/- with respect to the sale consideration of the unit. That as per recital clause (N), the total sale consideration of the unit was Rs. 2,86,42,965/-.
- vi. That since timely payments with respect to the sale consideration of the unit was the essence of the agreement, subsequent allottee with an intention to make timely payments, obtained a home loan of Rs. 2,05,00,000/- from Tata Capital Housing & Finance Limited. That since, the subsequent allottee had availed a construction linked payment plan, the respondent company regularly raised payment demands with respect to its stages of construction which were duly and timely paid by the subsequent allottee.
- vii. That after having made timely payments with respect to all the payment demands of the respondent company, the respondent company issued an offer of possession letter dated 28.11.2017 to the Subsequent Allottee wherein the respondent company had further raised a balance demand of Rs. 19,93,449/- along with Rs. 3,97,083/- payable towards the IBMS and Advance Maintenance. That in response to the extraordinary amount of balance demanded by the respondent company, the subsequent allottee sent a letter dated 27.12.2017 addressed to Mr. Brotin Banerjee, MD and CEO of TATA Housing



- Development Co. Ltd. wherein the subsequent allottee duly requested for a discount of 5% from the balance demand (i.e., Rs. 19,93,449/-) raised by the respondent as he was earlier issued a discount certificate in 2014.
- viii. That the subsequent allottee with a bona fide intention to take possession of the unit, had made timely payments through out. The same is evident from the fact that the subsequent allottee, vide the statement of accounts (as on 06.03.2019) issued by the respondent company, had made a significant amount of Rs. 2,87,30,449/- towards the sale consideration of the unit. That despite receiving more than 100% of the sale consideration of the unit, the respondent company kept raising unlawful payment demands vide each possession/payment demand reminders.
- ix. It is hereby crucial to state that in the year 2017, the subsequent allottee being the authorised signatory/ director of the complainant requested the representatives/ directors of the respondent for a transfer of the unit in favour of the complainant. However, for one reason or the other, the respondent company kept prolonging the execution of the said transfer. That the complainant through its director i.e., subsequent allottee, from the years 2017-2020 did everything in his capacity to inquiries about the said transfer of the unit in favour of the complainant, but his inquiries were either ignored or met with unambiguous responses.
- x. That it is after a delay of 2 years that the respondent issued a transfer of apartment letter dated 25.02.2019 whereby it was stated that the respondent had no issue transferring the unit from the subsequent allottee to the complainant. However, even as 25.02.2019, the

respondent was yet to officially execute a formal agreement in favour of the complainant recording the transfer of the unit. It is submitted that the respondent after an inordinate delay of 3 years executed a tripartite agreement dated 23.01.2020 which duly recorded the transfer of the unit from the subsequent allottee to the complainant and thereafter the respondent executed an official apartment buyer's agreement in favour of the complainant on the same date.

- xi. The grievance of the complainant inter alia is that the respondent, despite collecting more than the entire sale consideration for the unit i.e., an amount of Rs. 2,87,30,449/-, and despite committing a delay of more than 3 years in executing the transfer of the unit from the subsequent allottee to the complainant has been raising unlawful payment demands with respect to the unit that includes, CAM/Maintenance Charges, Interest Bearing Maintenance Security (IBMS) charges, Holding Charges, Stamp Duty and Registration Charges. That due to the delay caused by the respondent in executing the transfer of the unit, the complainant could not take possession in 2017 itself and get the registration done. Since, the transfer documents including the tripartite agreement and apartment buyer's agreement were only executed with the complainant on 23.01.2020, the complainant cannot be liable to make payment towards the CAM/Maintenance Charges, Interest Bearing Maintenance Security (IBMS) charges and Holding Charges from the date of offer of possession i.e., 28.11.2017 till 23.01.2020.
- xii. That the complainant through its authorised signatory i.e., the subsequent allottee, had to run from pillar to post, in order to get the transfer of the unit executed in favour of the complainant. That the



delay in executing the transfer of the unit has been caused by the deficiency in services of the respondent company. That for the delayed period of 3 years in the execution of the said transfer, the complainant cannot be made liable to meet the unlawful and unjust payment demands of the respondent as during the delayed period, the complainant could not have taken possession of the unit.

- xiii. That the complainant has been severely traumatised by the gross deficiency in services of the respondent and unethical trade practice of the respondent as the respondent has not only defaulted in causing a delay of 3⁴ in executing the transfer of the unit in the favour the complainant, but has simultaneously been demanding unlawful payment demands with respect to the maintenance and holding charges. That it is trite to mention that since, the Unit had not been timely transferred in favour of the complainant and thereby the complainant could not take possession of the unit, holding charges and maintenance charges is bound to be excluded for the period of delay.

C Relief sought by the complainants: -

4. The complainants have sought following relief(s)

- I. To direct the respondent to handover the possession of the unit, and to execute conveyance deed in favour of complainant and pay interest @9.30 per annum
- II. To direct the respondent to exclude the holding charges and maintenance charges from the period of delay caused by respondent
- III. To direct the respondent to pay a sum of Rs. 2,00,000/- to the complainant as litigation cost.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds: -

- i. That the complainant is, as per its own admission in its complaint, a defaulter and has delayed in making timely payments of instalments, despite several reminders. It is submitted that the complainant was very well aware that it was under an obligation to make timely payments. It is submitted that despite receiving various reminders, the complainant failed to clear its outstanding dues and perform its contractual obligations, the complainant has chosen to approach the Authority with a frivolous Complaint coupled with a *mala-fide* intention to unjustly enrich itself and in one way or the other cover-up its own breaches and non-performance of contractual obligations. The said irresponsible and wrongful actions of the complainant, *inter-alia*, had serious implications on the project completion targets, thereby jeopardizing the whole project - Gurgaon Gateway, Sector 112, Gurugram, Haryana bearing RERA Registration No. 148 of 2017 dated 28.08.2017 (hereinafter "**the Project**"). Further, the possession of the apartment bearing no. C-801, Gurgaon Gateway, Sector - 112, Gurugram (Haryana) had been offered to the previous allottee i.e. Director of the Complainant Mr. Praveen Kumar Gupta vide offer of possession letter dated 28.11.2017 after having received occupation certificate dated 30.08.2017 from DTCP



(Haryana). Since, then first Mr. Praveen Kumar Gupta (previous allottee/Director of Complainant) and after transfer in January, 2020 the Complainant is avoiding to settle the balance outstanding and take possession and have the conveyance deed executed in its favour.

ii. That there is no delay in offering possession by the respondent. The respondent was to endeavour to give possession to the purchaser on or before November, 2017 and the respondent had offered possession of the apartment on 28.11.2017 after having received occupation certificate vide memo dated 30.08.2017 from DTCP (Haryana). The apartment was transferred on 13.12.2019 by issuing an allotment letter in favour of the complainant on request of the previous allottee i.e. Mr. Praveen Kumar Gupta, who is also the Director of the complainant.

iii. That It is pertinent to highlight the fact that the Mr. Aashish Singhal was not the initial allottee but co-allottee of the apartment in question along with Mr. Praveen Kumar Gupta (alleged subsequent allottee) from the very start. The allotment letter dated 28.06.2013 issued and the agreement to sell (bearing stamp paper dated 30.09.2013) executed by the respondent in favour of both Mr. Aashish Singhal and Mr. Praveen Kumar Gupta, is proof of the said fact.

iv. It is submitted that based on the request of Mr. Aashish Singhal and Mr. Praveen Kumar Gupta and submission of requisite documents, the allotment letter dated 28.06.2013 and the agreement to sell (bearing stamp paper dated 30.09.2013) were endorsed entirely in favour of Mr. Praveen Kumar Gupta. All amounts that were demanded vide Offer of

possession letter dated 28.11.2017, were in terms of the agreement to sell and had been well within the knowledge of Mr. Praveen Kumar Gupta.

- v. The respondent had offered possession of the apartment vide letter dated 28.11.2017 and shared an account statement along with the same detailing the payments collected so far and payments that Mr. Praveen Kumar Gupta was supposed to make and had given time till 27.12.2017 to pay the same without any interest or penalty. Having regard to the same, Mr. Praveen Kumar Gupta, cleverly wrote a letter dated 27.12.2017 on the due date as per the offer of possession letter, seeking discount, just to delay the things despite having received the said offer of possession a month prior.
- vi. That the respondent after having offered possession to Mr. Praveen Kumar Gupta (alleged subsequent allottee) on 28.11.2017, however, Mr. Praveen Kumar Gupta kept on avoiding to settle outstanding payment and take possession of the apartment, despite having received several reminders in respect thereof. Thereafter, it was only in 2019, Mr. Praveen Kumar Gupta (Director of Complainant) submitted the request for transfer vide request email dated 25.02.2019 for transfer of allotment of apartment in favour of the Complainant, which letter he required for raising funds through bank/fls. Having regard to the same, the respondent issued a letter dated 25.02.2019 intimating all the requisite documentation to Mr. Praveen Kumar Gupta to complete the transfer process.

7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

9. 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

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by The Town and Country Planning Department, Haryana 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

11. 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)

Section 11

.....

(4) The promoter shall-

(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.

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F Findings on the relief sought by the complainants.

F. I Direct the respondent to pay delay possession charges alongwith prescribed rate of interest.

13. The original allottee namely Mr. Aashish Singhal , in the year 2013, booked a residential unit bearing no. C-801, admeasuring super area of 2535 sq. ft., on the 8th Floor, of Block- C in the Project namely "Gurgaon Gateway" situated at Sector-112-113, Village Bajghera, Tehsil and District Gurgaon, Haryana. In the year 2013, the original allottee approached the director/authorised signatory of the complainant namely Mr. Praveen Kumar Gupta with an intention to transfer the unit. The original allottee made various representations with respect to the unit which he had received from the respondent and its representatives. The allotment letter dated 28.06.2013 issued and the agreement to sell



executed by the respondent in favour of both the allottees (original allottee and subsequent allottee).

14. The original allottee and the subsequent allottee entered into a sale agreement dated 15.05.2013 which encapsulated the terms of sale and purchase of the unit from the initial allottee to the subsequent allottee.
15. The respondent builder issued an offer of possession letter dated 28.11.2017 after obtaining occupation certificate on 30.08.2017 in favour of the subsequent allottee. Thereafter, the apartment was transferred on 13.12.2019 by issuing allotment letter in favour of the complainant on request of the Mr. Praveen Kumar Gupta (Director/Authorised Signatory of the complainant).
16. After due consideration of all facts and circumstances, the Authority is of the view that the subsequent allottee voluntarily transferred his unit in favour of the complainant. It is important to note that, according to the possession clause of the buyer agreement dated 23.01.2020, which was executed between the complainant and the respondent, the unit was deemed ready for possession and use by the complainant. The unit in question was initially offered to the subsequent allottee, who is also a director of the complainant's company, on 28.11.2017. The subsequent allottee then voluntarily requested the transfer of his unit to the complainant, which was duly carried out on 13.12.2019, when an allotment letter was issued in favor of the complainant. It is also important to note that the complainant did not face any delays in taking possession of the unit. All requirements were met, and the unit was in a



condition suitable for use upon transfer. So, the present relief sought by the complainant is not admissible and same is hereby ordered to be dismissed.

F.II To execute a conveyance deed as per section 17 of the Act, in favour of the Complainant.

17. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

18. The respondent is directed to get the conveyance deed of the allotted unit executed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.


F.III To direct the respondent to exclude the holding charges and maintenance charges from the period of delay caused by respondent.


19. The respondent-promoter is not entitled to charge holding charges from the complainant-allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020. Further, the issues of maintenance charges has been dealt in detail in complaint bearing no. **4031 of 2019 titled as Varun Gupta Vs Emaar MGF Land Limited**, that the respondent is right in demanding maintenance charges at the rate prescribed therein at the time of offer of possession.



H. Directions of the authority

20. Hence, in view of the factual as well as legal positions detailed above, the complaint filed by the complainant seeking above reliefs against the respondents is decided in terms of paras 13 to 19 above. Ordered accordingly.
21. Complaint stands disposed of.
22. File be consigned to registry.


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.11.2024

