BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**393 of 2021**
First date of hearing	**:**	**26.02.2021**
Date of decision	**:**	**14.09.2021**

1. Suman Yadav
R/o: G-403, AWHO, Sishpal Vihar, Sohna Road, Gurugram

Complainant

Versus

1. M/s Niho Construction Ltd.
R/o: X-22, First floor, Hauz Khas New Delhi.
2.Sunil Bedi
R/o: H.no: F-4, Nizamuddin West New Delhi 110003
Also at 3rd floor, JMD Regent Square, MG Road, Opposite Sahara Mall, Gurugram-122002
3.Ashok Logani
R/o: H.No- D-848, New Friends Colony, new Delhi
4.Lalit Gulati
R/o: C-1/10, Vasant Vihar, New Delhi.
5. Gupta Promoters Pvt. Ltd.
R/o: D-967, New Friends Colony, New Delhi.
Registered office: Unit no. 1110, 11th floor, tower C, Business Zone, Nirvana country, Gurugram 122018.

Respondents

CORAM:
Shri Samir Kumar — **Member**
Shri Vijay Kumar Goyal — **Member**

APPEARANCE:
Shri Satyender Kumar Goyal — Advocate for the complainant
Shri Manish Kumar — Advocate for the respondent no.1

Shri Venket Rao — Advocate for the respondent no. 2 & 4

Shri Nishant Jain — Advocate for the respondent no. 5

ORDER

1. The present complaint dated 28.01.2021 has been filed by the complainant/allottee in Form CRA 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)(f) & 17(1)of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

A. Project and unit related details

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

S.No.	Heads	Information
1.	Project name and location	Scottish Mall, Sector 49, Gurugram, Haryana.
2.	Project area	0.876 acres
3.	Nature of the project	Commercial complex
4.	Unit no.	Space no. FF-21, first floor [Page 38 of complaint]

5.	Unit measuring	645 sq. ft.
6.	Date of execution of buyer's agreement	25th January 2007 (page 37 of complaint)
7.	Payment plan	Construction linked payment plan
8.	Collaboration agreement	27.07.2004
9.	Total consideration	Rs.26,28,000/- as per averment of complainant (page 3 of complaint)
10.	Total amount paid by the complainant	Rs.26,28,000/- as per averment of complainant (page 3 of complaint)
11.	Due date of delivery of possession (as per clause 15 of the flat buyer's agreement i.e., 24 months from the date of this agreement)	25.01.2009
12.	Possession certificate	26.11.2014 [Page 53 of complaint]
13.	Occupation certificate	13.06.2008 (page 54 of complaint)

B. Facts of the complaint

3. That in the year 2006, the respondents advertised their proposed project called "Scottish Mall, in Sector 49, Gurugram, Haryana showing that the construction and quality of the commercial complex and the infrastructure would be world class. That the respondent no 1 is the developer and respondent no. 2 to 5 are collaborators/promoter/landowner of the commercial complex.

4. That the complainant is owner/allottee is possession the shop no. FF-21measuring 645 sq.ft. in Scottish Mall, Sector 48 & 49 Sohna Road, Gurugram. The respondent no.1 entered into a collaboration agreement dated 27.07.2004 as developer with the respondent no. 2 to 5 with respect to the commercial plot of land measuring 0.876 acres forming part of block 'P', of the residential colony known as 'Uppal's Southend' situated in Sector 48 & 49 Gurugram tehsil & District Gurugram Falling with the revenue estate of village Fazilpur Jharsa and Ghasola Tehsil & District Gurugram on the terms and conditions stated therein. In terms of collaboration agreement dated 27.07.2004 with the respondent no.2 to 5, the respondent no.1 constructed a commercial complex known as "Scottish Mall" upon the aforesaid plot consisting of 75 shops on Sohna- Gurugram road.

5. That during the course of construction of the said mall, the respondent no. 1 invited applications from various persons for allotment of shop of various sizes in the aforesaid mall known as "Scottish Mall". In various advertisement and broacher, the respondent no. 1, had shown a rosy picture to entice innocent persons to purchase the shops in the aforesaid mall and the officials of the respondent no.1 also stated that the said building is free from all defect and the purchasers would get a title free from

all defects free from all encumbrance and it would be very beneficial in future.

6. That initially the aforesaid shop was allotted to one Jaibir Singh s/o Balbir Singh resident of h.no- 562, Sector 17, Gurugram and Sudhir Kumar son of Shiv Nath Gupta resident of 222/18, Laxmi Garden Gurugram who entered into a commercial premises buyer's agreement dated 25.01.2007 with the respondent no.1. subsequently the aforesaid shop was transferred in the name of Shailza Panwar, resident of P-20, Baird Palace near Nath Bazar Delhi Cant, New Delhi and she was endorsed as buyer on the original commercial premises buyer's agreement dated 25.01.2007.

7. The complainant was also lured with the rosy pictures and the assurance on behalf of the respondent no. 1 and the complainant purchased the aforesaid shop in resale and their name was duly endorsed as buyer upon the original commercial premises buyer's agreement dated 25.01.2007. The respondent no. 1 duly accepted, acknowledged and admitted the complainant as buyer/allottee of the aforesaid shop.

8. That subsequently the possession of the aforesaid shop was handed over to the complainant by the respondent no.1 and a certificate cum-confirmation letter dated 26.11.2014 was issued by the respondent no.1 in favour of complainant. It was also

admitted and accepted by the respondent no.1 that the respondent no.1 has received total dues in final settlement of agreement consideration and accordingly the handed over the possession of the aforesaid shop to the predecessor of the complainant. The complainant admittedly deposited the total amount of sale consideration of the aforesaid shops with the respondent no. 1 which has been duly admitted, accepted and acknowledged by the respondent no 1 as stated above and thereafter the complainant is in actual, physical and vacant possession of the aforesaid shop being owner/allottee of the same. However, despite receiving the total sale consideration from the complainant the respondent no 1 along with respondent no. 2 to 5 have been miserably failed to convey/transfer the legal title of the aforesaid shop to the complainant since last more than 5 years without any rhyme or reason by executing and getting registered conveyance deed in favour of complainant and in the absence of any legal title the complainant is facing a lot of hardships. The complainant has been approaching the respondent no.1, continuously as they had been deprived of the legal ownership of the aforesaid shop in the absence of conveyance deed of the aforesaid shop in her favour by the respondent no.1.

9. The respondent no. 2 to 5 while entering into the collaboration agreement dated 27.07.2004 with the respondent no. 1 have

categorically agreed to execute necessary power of attorney in favour of respondent no. 1 enabling it to execute and get registered the conveyance deed of the aforesaid shop in favour of complainant and various other allottees. Recently it come to the notice and knowledge of the complainant that the respondent no. 1 in collusion with respondent no. 2 to 5 executed and got registered the conveyance deeds of only 11 shops to the respective allottees way back in the year 2015. However, the respondents in collusion with each other never came forward to complete the execution and registration of the conveyance deed in favour of complainant and other remaining shop owners with respect to their shops illegally and unauthorisedly.

10. That it is pertinent to mention here that the occupation certificate in respect of the aforesaid building i.e. the Scottish Mall was issued by the statutory authorities vide memo no. 5081 dated 13.06.2008. However, the completion certificate of the project building has not yet been issued.

11. That the respondent no. 2 to 5, have duly authorised the respondent no.1 to develop the aforesaid mall and to book, sale the shops fell into the share of the respondent no.1 are also duly bound by the commercial premises buyer's agreement dated 25.01.2007 and cannot escape from the liability of execution and registration of the conveyance deed of the aforesaid shop in

favour of the complainant and bound to execute necessary power of attorney in favour of respondent no. 1 authorizing the respondent no.1 to execute and get registered the conveyance deed of the aforesaid shop in favour of complainant and other shop owners.

12. That in the absence of legal and valid title free from all defects in favour of complainant and other remaining shop owners by the respondents without any rhyme or reason, the complainant and all other remaining shop owners have been facing a lot of hardships, mental agony and harassment as they have been deprived of the legal and valid title of their respective shops and they are not able to deal with their shops as absolute owners of the same despite payment of total sale consideration of their respective shops by the complainant to the entire satisfaction of the respondent no.1, more than 5 years back.

13. That in various meetings the respondent no.1, gave false assurances to the complainant and other shop owners for completion of the legal formality of execution and registration of the sale deeds/conveyance deeds, but the needful was never done and the respondent no. 1 and on persistence requests of the complainant and other shop owners for completion of the legal formality of execution and registration of the sale deeds/conveyance deeds, but the needful was never done and the

respondent no.1 and on persistence requests of the complainant and other shop owners, stated that the respondent no.2 to 5 are not executing necessary power of attorney in favour of respondent no.1, therefore in the absence of same the conveyance deed of the aforesaid shop in favour of complainant and other remaining shops in favour of other owners/allottees could not be executed and get registered.

14. That after coming to the notice and knowledge of the same the complainant tried to contact the respondent no. 2 to 5, but none of them ever tried to resolve the issue and it seems that all the respondents have colluded with each other with malafide and dishonest intentions to harass, humiliate and torture the complainant and other innocent buyers physical, mentally besides causing monetary loss to them.

15. That from the facts and circumstances stated above and in view of the inordinate and unnecessary delay caused by the respondents in collusion with each other it becomes clear that all the respondents after receiving the total sale consideration from the complainant and other remaining shop owners with respect to their respective shops have become dishonest and none of respondents have any intention to transfer or convey the legal and valid title of the aforesaid shops to the complainant and other remaining shop owners in their favour with malafide intentions to

cause wrongful loss to complainant and other shop owners and wrongful gain to the respondents rendering all the respondents liable for prosecution and punished under Indian Penal laws besides the liability to convey/transfer the clear title in favour of complainant and other remaining shop owners and also to pay damages suffered by the complainant on account of illegal and unauthorised acts of all of you.

16. That the complainant along with owners of the shops in the aforesaid mall got served a legal notice dated 07.08.2020 upon the respondents apprising them about all the facts and requesting them to complete the execution and registration of the conveyance deed in favour of complainant and other owners of the shops, but despite receiving the legal notice none of them replied to the said notice, nor came forward to do the needful except the respondent no. 5 who in its reply dated 01.09.2020 stated that the respondent no.5 had executed and got registered the sale deed bearing vasika no. 4158 dated 13.10.2017 dated in favour of respondent No.2 with respect to its share. However, no copy of any sale deed was ever supplied or handed over to the complainant.

17. This ld. authority is fully empowered to pass appropriate orders directing the respondents to execute and get registered the conveyance deed of the aforesaid shop in favour of complainant

by exercising the power under section 31 of the Real Estate (Regulation and Development) Act, 2016 on the basis of the present complaint as in terms of section 17 of the Act, the builder/promoter/developer is required to execute and get registered the conveyance deed of the unit/shop in favour of the allottee within three months from the date of issuance of the occupation certificate, which in the present case was issued way back in 2008 and the conveyance deed has not been executed and got registered till date. Since the completion certificate has not yet been issued, therefore the project would be considered as an "ongoing project" as per section 3 of the Act and squarely falls within the jurisdiction of the Ld. Authority.

C. Relief sought by the complainant

18. The complainant has filed the present compliant for seeking following reliefs

    i. The respondents be directed to complete the execution and registration of the conveyance deed of the shop No. FF-21measuring 645 sq.ft. in Scottish Mall, Sector-48 & 49 Sohna Road, Gurugram on stamp and registration charges to be borne by the complainant.

19. On the date of hearing, the authority explained to the respondents/promoters about the contravention as alleged to

have been committed in relation to section 11(4)(f) & 17(1) of the Act and to plead guilty or not to plead guilty.

D. Reply by the respondent no. 5

20. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

i. At the outset, respondent no 5 denies each and every averment made contention raised, projection sought to be given by the complainant in the complaint under reply to th extent the same is contrary to and inconsistent with the true and complete facts of the case and the submissions made in the present reply and the same is denied in toto and no part there may be deemed to be admitted by respondent no. 5 for want of non-traverse, except and in so far as that which is specifically admitted by it. That the reply to the present complaint is being filed through shri Rohir Harbola, an authorized person of the respondent no. 5 company. Further, respondent no 5 reserves its right to add its pleas to the present reply and amend the same and to file documents, at a later stage, if need so arises. The complaint has been filed without any cause of action hence the present complaint is liable to be rejected forthwith.

ii. The present complaint is not maintainable and the hon'ble regulatory authority has no jurisdiction whatsoever to decide

the present complaint. The project i.e., Scottish Mall, Sector 49, Gurugram, Haryana is neither covered under the Rules, 2017 nor is the said project of the respondents registered with the hon'ble regulatory authority. As per the definition of "ongoing project" under Rule 2(o) of the said rules, any project for which an application for occupation certificate, part thereof or completion certificate or part-completion certificate is made to the competent authority on or before the publication of the said rules is outside the purview of rules, 2017.

iii. It is also most respectfully submitted that the hon'ble regulatory authority has no jurisdiction to entertain the present complaint as the complainant has not come to the hon'ble regulatory authority with clean hands and have concealed the true and material facts. No cause of action has accrued in favour of the complainant to file the present complaint before the hon'ble regulatory authority. The complaint being without any cause of action is liable to be dismissed on this ground alone. The complaint of the complainant lacks bonafide and smells smack of malafide who has not approached the hon'ble auithority with clean hands. The complainant is not entitled for any relief under the Act 2016.

iv. The complainant is estopped from filing the present complaint by their own acts, conducts, admissions, commissions, omissions, acquiescence and latches. The complainant has moved the instant vexations complaint to harass the respondent no. 5. The present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this hon'ble authority. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent no. 5. The allegations levelled by the complainant qua the respondent no. 5 are totally baseless and do not merit any consideration by this hon'ble authority.

v. The complainant has no locus standi or cause of action to file the present complaint. The complainant has not been able to establish the contravention of any provisions of the Act by the respondent no. 5. That disputed and complicated questions of fact are involved which shall require leading of evidence and cannot be decided in summary proceedings under the Act. Hence, the present complaint cannot be decided by this hon'ble authority.

E. Reply by the respondent no. 2, 4 and 5

i. The present reply to the complaint is being filed on behalf of the respondent no. 2, 4 and 5. That with the intention of

keeping the ld. authority abreast with the subsequent development pertaining to change in ownership, it is submitted that presently Mr. Sunil Bedi, the respondent no. 2 has purchase the respective owner's share of Mr. Lalit Gulati and M/s Gupta Promoters Pvt. Ltd. in the owner's area allocation by executing the sale deed in his favour before the sub-registrar, Gurgaon.

ii. The owners seek to raise the following objections, each of which have been taken in the alternative and its without prejudice to the other. Nothing contained in the preliminary objections and in the reply on merits below may, unless otherwise specifically admitted, be deemed to be direct and tacit admission of any allegation made by the complainant in the complaint.

iii. That at the very outset, it is stated that the instant complaint has been preferred by the complainant on frivolous and unsustainable grounds against the owners and the complainant has not approached this learned authority with clean hands. The instant complaint is not maintainable in the eyes of law and is devoid of merit and is fit to be dismissed in limine.

iv. That the respondent no.1 is the developer and promoter of the commercial building "Scottish Mall" and the owners are

only the landowners of the plot of land measuring 0.876 acres wherein the project is developed.

v. That a collaboration agreement dated 27.07.2004 was entered between the developer and the landowners i.e. Mr. Sunil Bedi the owner of 39.89% of undivided share in land admeasuring 0.876 acres, Mr. Ashok Logani owner of 22.78% of undivided share in land admeasuring 0.876 acres, Mr. Lalit Gulati owner of 22.78% of undivided share in land admeasuring 0.876 acres and M/s Gupta Promoters Pvt. Ltd. owner of 14.55% of undivided share in land admeasuring 0.876 acres, for the purpose of development and construction of a multi-storeyed commercial complex by the developer on the land of the landowners.

vi. It is humbly submitted that the respondent no. 1 had satisfied themselves fully about the right and title of the owners on the land being the subject matter of the agreement and also about the integrity and the goodwill of the owners.

vii. That according to the collaboration agreement, respondent no.1 undertook to develop the project at its own cost and expenses and with its own resources. Respondent no. 2, 4 and 5 had no role to play in the said development/ construction process and is solely confined to providing the land to the respondent no.1.

viii. Therefore, it is submitted that the owners does not fall within the definition of a promoter, as defined in clause 2(zk) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act, 2016) for the purpose of this particular project. The owners have neither constructed nor developed the said project and also is not involved in marketing/promoting, selling or any other functioning/activity of the project in whatsoever way.

ix. Further, in terms of Section 37 of the Act, the ld. authority is bestowed with power to issue directions to promoter, real estate agents and allottee for the purpose of discharging its functions under the provisions of this Act, Rules, Regulations. Section preproduced herein below:

> *"The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned"*

x. Since, the owners are not promoters for the purpose of the said project thus, section 37 of the Act cannot be applicable on the owners and no directions in terms of relief sought can be issued to the owners It is humbly submitted that the words "such directions shall be binding on all concerned" cannot be construed to mean that the directions will be binding on all

persons. Such a construction will not extend the jurisdiction of the ld. authority beyond the intendment of the Act. Moreover, according to the rule of construction "Ejusdem Generis", where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed. The Hon'ble Supreme Court in M/s. Grasim Industries Limited vs Collector of customs, Bombay made the following observations with regard to the rule of ejusdem generis:

> *"The rule is applicable when particular words pertaining to a class, category or genus are followed by general words. In such a case the general words are construed as limited to things of the same kind as those specified. The rule reflects an attempt to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous."*

Therefore, the words "on all concerned" used in section 37 cannot be taken to mean any and every person but the persons subject to the jurisdiction of the ld. Authority.

Accordingly, the provisions of the Act, 2016 are not applicable to the respondent no.2, 4 and 5 for this particular project.

xi. It is humbly submitted before the ld. authority that the owners are not parties to the commercial premises buyer's agreement entered between the respondent no.1 and the complainant. Therefore, the complaint is liable to be dismissed at the

threshold qua the owners on the ground that the grievance raised by the complainant falls within the domain and ambit of being "purely private contractual agreement between complainant and respondent no. 1 and the rest of the respondents are not parties to the said contract executed between the respondent no. 1 and the complainant.

xii. That there is no privity of contract or commercial relation between the complainant and the owners as no consideration of any kind whatsoever has been paid by the complainant to the owners nor has there been any kind of agreement executed between the complainant and the owners. Moreover, the owners are not entities who have allotted unit in the said Project to the complainant as the said project does not belong to the owners. It is the respondent no.1 who has allotted the units to the complainant and the project particularly belong to the respondent no.1. Furthermore, a bare perusal of the documents, including the present complaint, substantiates the fact that the contract was between the complainant and the respondent no. 1, and the grievance of the complainant is also against the respondent no.1. The owners have no role to play in what seems to be an issue between the respondent no.1 and the complainant.

xiii. It is pertinent to mention herein that the complainant had never approached the owners, nor were any assurances provided by the owners to the complainant at the time of booking of the commercial unit. Further, there is no relationship of the promoter and allottee between the owners and the complainant within the meaning of the Act.

xiv. Further, that the complainant has a contractual relationship with the respondent no.1 and that has to be settled privately. Instead, the owners should not be dragged into it as the complainant neither has any relationship with the owners nor has any agreement made between them.

xv. That in the case of *Kapilaben & Ors. Versus Ashok Kumar Jayantilal Sheth through POA Gopalbhai Madhusudan Patel & Ors. (Civil Appeal Nos. 10683-86 of 2014)*, the Hon'ble Apex Court has held specific performance cannot be granted against a party who is not a party to a contract basis the doctrine of privity of contract. The relevant paragraphs are reiterated below for easy of reference:

> *"7. Upon considering the facts and circumstances of the present case, it is evident that there is no privity of contract between the Appellants and Respondent Nos. 1. Respondent Nos. 1 were not party to the 1986 agreement. Vice versa, the Appellants were not party to the 1987 agreements, though whether or not they had knowledge of the same is disputed. Hence Respondent Nos 1 cannot seek*

specific performance of the 1986 agreement, or for that matter, the 1987 agreements, against the Appellants....."

xvi. That the owners are liable to be deleted from the array of parties in the present complaint because there is no privity of contract between the complainant and the owners. Furthermore, the owners are completely unaware of any transaction between the complainant and respondent no.1 and cannot be held liable or accountable for any action of the owners. Also, a careful and bare perusal of the complaint reveals that no specific allegation or averments have been made against the owners and therefore, the owners deserve to be deleted from the array of parties.

xvii. That there is no real cause of action that has either been pleaded or exists as against the owners. Further, the complainant has no locus standi to file the present complaint against the owners. The present complaint is filed with an ulterior motive to unnecessarily drag the owners into frivolous litigation without any basis or cause of action. That it is abundantly clear that the complainant is merely abusing the process of law as the complaint is based on illusory cause of action.

xviii. That the said buyer's agreement has been executed between the complainant and the respondent no. 1. Thus, the

obligations and liabilities arising from the said buyer's agreement is attributable only to the signatories of the said agreement. Nowhere it is stated that the owners are liable to execute conveyance deeds with the allottees. In absence of there being any liability under the buyer's agreement on the part of the respondent no. 2, 4 & 5, the respondent no. 2, 4 & 5 cannot be made subject to the reliefs sought by the complainant. Hence, the reliefs sought by the complainant cannot be imposed on the respondent No.2, 4 & 5.

xix. That in terms of the collaboration agreement dated 27.07.2004 the owners earmarked their respective built-up area allocation in the said complex. It is also agreed in the said collaboration agreement that both the parties are entitled to enter into any agreement/ arrangement with any prospective buyer qua their respective shares and to receive the booking/ sale amount thereof.

xx. That in term of clause 24 of the collaboration agreement dated 27.07.2004 the respondents were to earmark/ allocate the respective area allocation on tentative building plans, however, after completion of the said commercial complex, the respondent no.1 without keeping the rest of the respondents informed sold maximum area out of its allocation to various buyers and has also executed commercial premises buyer's

agreement in their respective names thereof. The factum of this commercial premises buyer's agreement was deliberately suppressed by the respondent no.1. and so, the rest of the respondents are not aware of the details of the transactions that have already happened with the buyers.

xxi. It is submitted that the respondent no.1 has neither approached the owners nor sent any new list of buyers to them thereby enabling the owners to act upon in terms of the collaboration agreement and execute necessary POA, agreements etc.

xxii. It is pertinent to point that very dubiously on a previous occasion, respondent no.1 has approached and requested the owners to execute a power of attorney for only 11 units for execution of sale deed(s) in the favour of the respective buyer and the said request was immediately acted upon by the owners and a POA was executed in favour of respondent no.1. Thereafter, neither the respondent no.1 has approached, nor the complainant/ buyer has approached the owners voicing out any grievance whatsoever.

xxiii. It is submitted at the cost of repetition that the owners have no intention of delaying the execution of sale/conveyance deed to the extent of their share in the said land by issuing power of attorney in favour of respondent no.1 provided that list of such

agreements along with all the details is made available to them.

xxiv. That in view of the submissions above the complainant has sought to rake up trivial issues qua the owners or the ones which have no relevance in the facts and circumstances of the present case. All the allegations as stated by the complainant qua the owners are wholly misconceived, baseless, false, unwarranted & untenable in law besides being extraneous and irrelevant having regard to the facts and circumstances of the matter under reference and that the owners denies each and every one of them, save and except those that have been specifically admitted in the reply on merits to be found herein under.

xxv. It is submitted that the owners were always ready and willing to perform their part of the contractual obligation with the respondent no. 1 and have never refused to sign any POA or allocate any share in terms of clause 24 of the collaboration agreement signed between the respondent no. 1 and the owners. It is submitted that a remedy if any that the complainant has, isa against the developer i.e. respondent no.1 and not against the owners. Neither the developer i.e. respondent no.1 has approached the owners for any compliance in terms of the collaboration agreement nor has

the complainant approached the owners pertaining to any grievances related to the execution of the conveyance deed.

xxvi. Further, it is pertinent to point that in the present complaint, no relief has been sought/ claimed by the complainant against the owners and the averments made in the complaint are mainly confined against the respondent no.1 alone.

xxvii. That despite the fact that the respondent no.1 has never approached the answering respondents for carrying forward the compliances under the collaboration agreement, the owners undertake to execute all documents, agreements and assurances as may be necessary and requisite to be extended to the respondent no. I to the extent of their demarcated share in respect of the property or purchase of the property allocable to the owners.

19. 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.

E. Jurisdiction of the authority

20. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observed that it has territorial as

well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

21. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by 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

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per the provisions of section 11(4)(f) & 17(1) of the Act of 2016 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant

22. **Relief sought by the complainant**: The complainant has sought following relief:

i. The respondents be directed to complete the execution and registration of the conveyance deed of the shop no. FF-21, measuring 645 sq.ft. in Scottish Mall, Sector 48 & 49 Sohna

Road, Gurugram on stamp and registration charges to be borne by the complainant.

F.I Execution of conveyance deed

The complainant is seeking execution of conveyance deed.

23. Clause 34 of unit buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

> *"34 CONVEYANCE OF THE UNIT*
>
> *Clause 34.:*
> *"That on the receipt of requisite permissions/sanctions from the authorities concerned for the sale the said premises to the allottee (and subject to the whole of the consideration money and registration charges for execution and registration of sale deed in favour of the allottee, and other dues, if any, having been received) the developers shall complete the sale and effect the Conveyance of the said premises to the Allottee in such manner as may be permissible, at the expense of the Allottee and on the terms and conditions of this Agreement except those omitted by the Developers as unnecessary and the terms and conditions, if any, imposed by the authorities in this behalf, in accordance with the provisions of Haryana Ownership Act, 1983 and other applicable laws."*

The authority has gone through the conveyance clause of the agreement and observe that the conveyance has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters.

24. In the present complaint, the complainant is seeking relief of execution of conveyance deed. Sec. 17(1) & proviso reads as under.

"Section 17: - Transfer of title

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

25. BBA has been signed inter se between the buyers and the builder on 25.01.2007. There is no point of controversy w.r.t. any issue involved in the matter, for example, payment and timeline for taking over/handing over of possession. Only point at issue is getting done the conveyance deed by the respondent no. 1 in favour of the complainant/ allotee. Only hitch in this context is that the respondent no. 2 to 5 who are landowners, they may give GPA to respondent no. 1 to execute the conveyance deed (all the documents / formalities on the basis of which collaboration agreement inter-se the builder and landowners have been made.) All the respondents are willing to do the needful. There is no hitch

in complying with the directions of the authority in this context. One month time period is given to the respondents to complete all the formalities w.r.t. collaboration agreement. Thereafter one more month is given to the respondent no. 1 to sign and execute conveyance deed in favour of the buyers/allottees and submit a compliance report in this regard before the authority.

G. Directions of the authority

26. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

i. The respondents are directed to execute the conveyance deed of the allotted unit within two months after completing necessary formalities as to collaboration agreement etc.

27. Complaint stands disposed of.

28. File be consigned to registry.

(Samir Kumar)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.09.2021

Judgement uploaded on 22.11.2021.