BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 300 of 2021
First date of hearing: 26.02.2021
Date of decision : 14.09.2021

1. Mukul Jain
   R/o: H.no: 864, Sector 14, Gurugram
2. Sarla Sharma
   R/o: H.no: 55, Sector 14, Gurugram

Complainants

Versus

1. Niho Construction Ltd
   Registered office: X-22, First Floor, Hauz Khas New Delhi
2. Sunil Bedi
   H.No.-F-4, Nizamuddin West New Delhi 110003
   Registered office: 3rd floor, JMD Regent Square, MG Road, Opposite Sahara Mall Gurugram 122002
3. Ashok Logani
   H.No. D-848, New Friends Colony, New Delhi
4. Lalit Gulati
   H.No.-C-1/10, Vasant Vihar, New Delhi
5. Gupta Promoters Pvt Ltd
   H.No.-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 complainants
Shri Manish Kumar for R 1	
Shri Venket Rao for R-2 & R-4	
Shri Nishant Jain for R-5	Advocate for the respondents

ORDER

1. The present complaint dated 27.01.2021 has been filed by the complainants/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)(f) & 17(1) of the Act wherein it is inter alia prescribed that the promoters shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made thereunder 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. No	Heads	Description
1.	Name of the project	"Scottish mall", sector 48&49 sohna road, Gurugram
2.	Nature of the project	Commercial complex
3.	Project area	0.876 acres

4.	Premises no.	FF-23, first floor [page no. 38 of complaint]
5.	Unit measuring	2522 sq.ft.
6.	Date of execution of Flat buyer's agreement	23.05.2007 [page no. 37 of complaint]
7.	Payment plan	Construction linked payment plan
8.	Collaboration agreement	27.07.2004 [page no. 19 of complaint]
9.	Total sale consideration	84,48,700/- as per averment of complainants (page 3 of complaint)
10.	Total amount payable by the Complainants	84,48,700/- as per averment of complainants (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)	23.05.2009 Due date is calculated from the date of execution of the agreement.
12.	Occupation certificate date	13.06.2008 [annexure-5 of complaint] [page no. 58 of complaint]
13.	Possession certificate	23.10.2009 [annexure-4 of complaint] [page no. 57 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.

4. That the respondent no.1 is the developer and respondent no.2 to 5 are collaborators/promoter/landowners of the commercial complex. The complainants are owners/allottees in possession of the shop no. FF-23, measuring 2522 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 respondents no. 2 to 5 with respect to the commercial plot of land measuring 0.876 acres (4239.84 sq. yards) 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. That in terms of collaboration agreement dated 27.07.2004 with the respondents 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 brochure, 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 defects and the purchasers would get a title free from all defects free from all encumbrances and it would be very beneficial in future.

6. That the complainant no. 2 and predecessor of the complainant no.1 lured with the rosy pictures and the assurance on behalf of the respondent no.1 and the complainant no.2 and predecessor of the complainant no.1 purchased the aforesaid shop vide commercial premises buyer's agreement dated 24.02.2007. The respondent no.1 duly accepted, acknowledged and admitted the complainant No.2 and predecessor of the complainant no.1 as buyer/allottee of the aforesaid shop.

7. That after the death of predecessor of complainant no.1, the complainant no.1 submitted a letter to the respondent No.1 for recording the name of the complainant no. 1 as allottee in place of his father, Moti Lal Jain which was accepted and after that the complainants became owners of the aforesaid shop.

8. That subsequently the possession of the aforesaid shop was handed over to the complainants by the respondent no.1 and a certificate cum- confirmation letter dated 07.09.2011 was issued by the respondent no.1 in favour of complainants. It was also admitted and accepted by the respondent no.1 that the respondent No.1 has received total dues in final settlement of total consideration and

accordingly handed over the possession of the aforesaid shop to the complainants.

9. That the complainants 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 complainants are in actual, physical and vacant possession of the aforesaid shop being owner/allottee of the same.

10. That however despite receiving the total sale consideration from the complainants the respondent no.1 along with respondents no.2 to 5 have been miserably failed to convey/transfer the legal title/ownership of the aforesaid shop to the complainants since last more than 5 years without any rhyme or reason by executing and getting registered conveyance deed in favour of complainants and in the absence of any legal title the complainants are facing a lot of hardships.

11. That the complainants have 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/sale deed of the aforesaid shop in her favour by the respondent no.1.

12. That the respondents 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 complainants and various other allottees.

13. That recently it come to the notice and knowledge of the complainants 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/owners 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 complainants and other remaining shop owners with respect to their shops illegally and unauthorisedly.

14. 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.

15. That the respondents 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 and the respondent no.2 to 5, who have received all benefits under the collaboration with the respondent no.1, are also duly bound by the commercial premises buyer's agreement dated 24.02.2007 and cannot escape from the liability of execution and registration of the conveyance deed of the aforesaid shop in favour of the complainants 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 complainants and other shop owners.

16. That in the absence of legal and valid title free from all defects in favour of complainants and other remaining shop owners by the respondents without any rhyme or reason, the complainants 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 complainants to the entire satisfaction of the respondent no.1, more than 5 years back.

17. That in various meetings the respondent no.1, gave false assurances to the complainants 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 on persistent requests of the complainants and other shop owners stated that the respondents 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 complainants and other remaining shops in favour of other owners/allottees could not be executed and get registered.

18. That after coming to the notice and knowledge of the same the complainants 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 complainants and other innocent buyers physical, mentally besides causing monetary loss to them.

19. 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 complainants and other remaining shop owners with respect to their respective shops have become dishonest and none of the respondents have any intention to transfer or convey the legal and valid title of the aforesaid shops to the complainants and other remaining shop owners in their favour with malafide intentions to cause wrongful loss to complainants 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 complainants and other remaining shop owners and also to pay damages suffered by the complainants on account of illegal and unauthorised acts of all of you.

20. That the complainants 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 complainants 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 complainants.

21. That 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 complainants 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 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 complainants:

The complainants have sought following relief:

i. The respondents be directed to complete the execution and registration of the conveyance deed of the shop No. FF-23, measuring 2522 sq.ft. in Scottish Mall, Sector-48 & 49 Sohna Road, Gurugram on stamp and registration charges to be borne by the complainants.

22. 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 to plead guilty or not to plead guilty.

D. Reply by the respondent no 5.

23. The respondents have contested the 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 complainants 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 respondent 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 complainants have 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 complainants 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 complainants lacks bonafide and smells smack

of malafide who has not approached the hon'ble auithority with clean hands. The complainants are not entitled for any relief under the RERA.

iv. The complainants are estopped from filing the present complaint by their own acts, conducts, admissions, commissions, omissions, acquiescence and latches. The complainants have mover 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 complainants qua the respondent no. 5 are totally baseless and do not merit any consideration by this hon'ble authority.

v. The complainants have no locus standi or cause of action to file the present complaint. The complainants have 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 complainants in the complaint.

iii. That at the very outset, it is stated that the instant complaint has been preferred by the complainants on frivolous and unsustainable grounds against the owners and the complainants have 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.

vi. 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.

iv. 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.

vii. 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

viii. 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.

ix. 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.

x. 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"*

xi. 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."*

xii. 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.

xiii. 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 complainants. Therefore, the complaint is liable to be dismissed at the threshold qua the owners on the ground that the grievance raised by the complainants falls within the domain and ambit of being "purely private contractual agreement between complainants 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 complainants.

xii. That there is no privity of contract or commercial relation between the complainants and the owners as no consideration of any kind whatsoever has been paid by the complainants to the owners nor has there been any kind of agreement executed between the complainants and the owners. Moreover, the owners are not entities who have allotted unit in the said project to the complainants as the said project does not belong to the owners. It is the respondent no.1 who has allotted the units to the complainants 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 complainants and the respondent no.1 and the grievance of the complainants are 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 complainants.

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

xiv. Further, that the complainants have 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 complainants 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 complainants and the owners. Furthermore, the owners are completely unaware of any transaction between the complainants 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 complainants have 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 complainants are 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 complainants sand 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 complainants. Hence, the reliefs sought by the complainants 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 complainants/ buyers have 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 complainants have sought to take 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 complainants 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. I 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

complainants have, is 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 complainants 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 complainants 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. 1 to the extent of their demarcated share in respect of the property or purchase of the property allocable to the owners.

23. 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 based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

24. The respondents have raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection 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

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 complainants at a later stage.

F. Findings on the relief sought by the complainants.

25. **Relief sought by the complainants**: The complainants have sought following relief(s):

    1. The respondents be directed to complete the execution and registration of the conveyance deed of the shop No. FF-23, measuring 2522 sq.ft. in Scottish Mall, Sector-48 & 49 Sohna Road, Gurugram on stamp and registration charges to be borne by the complainants.

F.I Execution of conveyance deed

The complainants are seeking execution of conveyance deed.

26. 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 complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters.

27. In the present complaint, the complainants are 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.*

28. BBA has been signed inter se between the buyers and the builder on 23.05.2007. 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 complainants/ allotees. 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

29. 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.

30. Complaint stands disposed of.

31. 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.