

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

Complaint no.	:	5202 of 2023
Date of filing complaint:		10.11.2023
Date of decision		09.08.2024

Om Parvesh Lakhani R/o: Flat No 229, Pocket 1, DDA SFS Plot No 468, Sector 9, Dwarka, Delhi 110077	Complainant
Versus	
M/S Magic Eye Developers Pvt. Ltd Regd. Office: Gf-09, Plaza M6, Jasola District Centre	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh.Yogesh Yadav (Advocate)	Complainant
Sh. Gaurav Rawat (Advocate)	Respondent

ORDER

1. The present complaint 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 29 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. Project and unit related details

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

S.No.	Particulars	Details
1.	Name and location of the project	The Plaza, Sector-106 , Gurugram
2.	Nature of the project	Commercial Complex
3.	DTCP license no.	65 of 2012 dated 21.06.2012 valid upto 21.06.2022
4.	Name of licensee	Magic Eye Developers
5.	RERA Registered/ not registered	72 of 2017 dated 21.08.2017 valid upto 31.12.2021
6.	Unit no.	Shop no. 1, Ground floor, T-C [pg. 62 of complaint]
7.	Unit area admeasuring (Super area)	805 sq. ft. [pg. 62 of complaint]
8.	Allotment Letter	17.06.2019 [pg. 62 of complaint]
9.	Date of buyer's agreement (not registered)	23.01.2020 [pg. 70 of complaint]
10.	Possession Clause	As given at the time of registration
11.	Commitment Charges	<i>Clause 9.of schedule C of BBA</i> <i>Commitment Charges: Irrespective of anything contrary contained in the body of agreement, Promoter shall (through WTC</i>



Noida Development Company Private Limited or otherwise) be entitled to grant long/short term lease/license of unit to appropriate tenant/user for such tenure (which may be even beyond the committed period) and other terms and conditions, which promoter/WTC Noida Development Company Private Limited may deem fit and proper as per prevailing market conditions Non-Lockable Units will be rented out either by promoter or representative body of allottees of non-lockable Unit along with other adjoining units. Promoter has committed that allottee shall get a minimum of following amount from sub-leasing/renting of unit for a period of **Thirty Six Months (i.e., committed period) with effect from date of offer of possession of unit by promoter.**

If Unit is a Retail Unit and is situated on Ground Floor:- Rs. 81/- (Rupees Eighty One Only) per month per square feet of super area of Unit (inclusive of all Taxes). In case, during the committed period, rent realized from sub-leasing of unit is less than the aforesaid amount, promoter shall pay the shortfall to allottee as commitment charge. After the end of committed period promoter shall not be liable to pay any money to allottee and allottee shall be entitled to actual proportionate monthly rent paid by tenant If Unit is a Retail Unit and is situated on First Floor:- **Rs. 73/- (Rupees Seventy Three Only) per month per square feet of super area of Unit (inclusive of all Taxes). In case, during the committed period, rent realized from sub-leasing of unit is less than the aforesaid amount, promoter shall pay**



		<p><i>the shortfall to allottee as commitment charge. After the end of committed period promoter shall not be liable to pay any money to allottee and allottee shall be entitled to actual proportionate monthly rent paid by tenant If Unit is Lockable Studio Unit:- Rs. 30/- (Rupees Thirty Only) per month per square feet of super area (inclusive of all Taxes) + 50% of rent/user charges paid by Lessees/Licensees for the unit. Balance 50% of actual rent/user charges paid by Lessee/Licensee during committed period shall belong to Promoter/Managing Entity. After the end of committed period, allottee shall be entitled to its complete rent paid by Lessee/Licensee. Subject to Lease/License already granted by promoter/promoter's nominee, allottee shall have to right to himself use/grant lease/license of Unit to appropriate person.</i></p> <p><i>All payments shall be made on monthly basis after deduction of TDS. Commitment Charges shall be payable only if allottee has made payment of his all dues to Promoter within 30 days from the date of receipt of offer of possession. Promoter shall be entitled to adjust its dues, if any, from the commitment charges.</i></p> <p><i>In case allottees create any hindrance in renting of such units by promoter or decline to avail the renting opportunity available with promoter, promoter shall stand discharged of its obligation of payment of commitment charges to allottee</i></p>
11.	Due date of possession	<p>31.12.2021 + 6 months Covid-19</p> <p>30.06.2022</p>

12.	Total sale consideration	Rs. 89,52,566/- as per the BBA
13.	Amount paid by the complainant	Rs. 89,97,581/- as per the sum of receipts
14.	Occupation certificate	28.11.2019 [pg. 66 of complaint]
15.	Offer of possession	27.12.2019 [pg. 66 of complaint]
16.	Email regarding delivery of possession	12.03.2020 [pg. 92 of complaint]
17.	Letter for invitation of conveyance deed	03.02.2020 [pg. 39 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -

- a. That the shop owner i.e., the complainant in the present case Mr. Om Parvesh Lakhani s/o Late Shri Lacchman Dass Lakhani resident of Flat No. 229, Pocket - 1, DDA SFS Plot No.- 468, Sector - 9, Dwarka, New Delhi - 110 077 purchased a non-lockable retail shop no. - 01, measuring 805 square feet super area (carpet area of 357 square feet) at ground floor of tower C in the commercial project known as plaza at sector - 106 - 1, Sector - 106, Gurugram.
- b. That the developer though its 'Channel Partner' M/s Investor Home Solutions signed and accepted the booking of said shop on June 17, 2019. A cheque no. 630997 dated 05.03.2019 for Rs. 2,00,000/- was received from shop owners as booking amount and payment receipt was issued by developer on 17-06-2019.
- c. That post paying booking amount for the unit, shop owners made further payments which were acknowledged by developer through his

- money receipts, issuance of a 'welcome cum allotment letter', issuance of demand cum offer of possession dated 27.10.2019, and a letter inviting shop owners to sign the developer buyer agreement or agreement.
- d. That apart from what has been detailed above, all the terms and conditions of the sale / purchase of said property were detailed in the developer buyer agreement or 'agreement' between shop owner and developer which was agreed and signed on 23.01.2020.
- e. That the consideration which was agreed to be paid to developer by shop buyers to become owners of the said shop includes basic sales price, EDC, IDC and IFMS.
- f. That the developer through a letter dated 27.12.2019 attached to the email dated 30-12-2019 sent to shop owners a 'demand cum offer of possession' claiming to have received 'occupation certificate' from the concerned government authorities. The letter asked shop owners to pay (after deducting the already paid amount of Rs. 42,08,218/-) the entire outstanding payment of Rs. 47,89,363/-.
- g. That the full and final payment of Rs. 47,89,363/- for taking over possession of the unit was made on 21.01.2020 and the same was acknowledged by the developer on 03-03-2020 vide his official receipt. The developer had wrongly charged and collected GST on EDC of Rs. 41,152/- and IDC of Rs. 3,864/- as part of the total payment of Rs. 47,89,363/- made. Both EDC/IDC being government levies and therefore were never subject to levy of GST, shop owner paid it under good belief and trust as he didn't know about the provisions of GST law.

- This therefore resulted in excess payment of Rs. 45,016/- to developer since 21.02.2020 therefore due for refund along with interest thereon.
- h. That on 07.03.2020, immediately after collecting the entire payment for the shop, the developer quickly sends a letter to shop owner stating that since they are working on finalizing leasing arrangements, therefore payment of commitment charges was to be start effective 28.11.2019, will now start effective 01.06.2020 .On 12.03.2020, the developer again reiterated its communication of 07.03.2020 that monthly payment of commitment charges shall start effective 01.06.2020 but without providing any acceptable reasons thereof.
- i. That on 24.03.2020, Covid 19 nationwide lockdown announced by the Central Government. During April 2020 to May 2020 and April 2021, due to spread of Covid 19 pandemic, Government through its different limbs issued various circulars, notifications and guidelines granting relief to different business segments including Real Estate.
- j. That the developer soon could sense another good opportunity, who have already been in default of not making payment of commitment charges which became due as per clause 10 to schedule c to the dba, again tried to take shelter of Covid 19 and quickly sends an email communication dated 01.06.2020, to shop owners titled 'important communication' through which once again 'announced' unilaterally and arbitrarily further postponement of payment of commitment charges till June 2021.
- k. That on careful reading of the government circulars, notifications and guidelines issued through its various limbs, the developer soon realized

that the conditions under which invocation of force majeure clause was allowed did not cover situations like payment of commitment charges to shop owners therefore Developer once again changes gears and announced that 'despite very difficult market conditions' and 'in consultation with their channel partners' and keeping in mind the interests of shop owners on 23.06.2020 sends another letter titled 'important communication' that they will start paying commitment charges effective 01.06.2020 @ 50% of the agreed rate but for 48 months.

- l. That these unilateral actions on the part of developer was nothing but a desperate attempt on the part of Developer to somehow take benefit in the name of Covid 19 assuming that the shop owners will either not raise any objection because shop owners may not be aware of details of reliefs granted by the government or as they are not connected to each other, no forceful protest will be possible by them.
- m. That though an email dated 22.07.2020, shop owner categorically rejected developer to delay payment of developer till 01.06.2020 apart from it being halved and made applicable only for 48 months.
- n. That in any case the developer was under contractual obligation to have proactively put in place leasing agreements with potential retail brands ideally before (in anticipation of receiving the occupation certificate soon) the offer of possession was made), if he did not want to bear the cost of paying commitment charges himself (refer clause 9 of Schedule c to agreement) but he did nothing to finalize any such arrangement in time and in fact till today i.e., November 2023 and nothing visible has

been done by developer in this regard. The entire project even after almost 4 years of offer of possession still looks completely deserted without even a single shop operating out from there. On top of this even the semi-commercial studio and residential apartments are hardly occupied by not more than 5% of the unit owners / tenants. The developer's intention was clearly never to fulfill any of his commitments made in our registered or other written agreements.

- o. That in blatant violation of terms and conditions of the developer buyer agreement and ignoring strong protests and rejections by shop owners, developer started paying commitment charges @ 50% of originally agreed amount effective 01.06.2020 and continued (though delayed inordinately) it till 14.02.2023. The last monthly instalment of 50% commitment charges was paid to shop owner on 14.02.2023 which pertained to the month of October 2022.
- p. That in the interim after receiving entire payment for the said shop, the developer invited shop owners on 25.07.2020 to take over physical inspection and possession of the shop but thereafter were told that the physical inspection, possession and hand over of keys is not possible as the shop in question is **non- lockable and more importantly, the developer shall be paying commitment charges or if in the interim the shop is leased to someone, the physical possession and handover of keys shall take place only to the lessee or to the shop owners after completion of period for which commitment charges shall be paid.**
- q. That the developer through various emails dated 16.10.2020,

18.02.2021 and 18.02.2023 respectively shared hollow updates and never to achieve leasing arrangements and reasons for delay in commitment charges. The fact is that developer made false updates and promising to shop owners to buy time as till today not even a single leasing arrangement has been formally offered to shop owners apart from the fact that he never intended to and also did not make full commitments - even the 50% commitment charges started by him effectively 01-06-2020, completely arbitrarily at 50% of due, which communicated to be paying for 48 months (despite rejection of the proposal by shop owners) abruptly stopped in February 2023 after 29 months.

r. That in the interim, upon shop owners' consistent and repeated requests through emails along with an agenda of issues to discuss with MD of the company, they were ultimately granted a meeting on 21.04.2023 in the office of Developer, which was attended by 7-8 shop and studio apartment owners to discuss multiple issues such as delayed payment of commitment charges, absence of any serious efforts for leasing of most of the shops lying vacant, handover of keys with physical possession of certain shops and the issue of stack parking, the meeting was attended by senior officials of the Developer company namely Mr. Anil Kohli, Chief Revenue Officer and Ms. Poulami Roy, Vice President of Customer Care, shop owners were told as follows:

1. Developer is working on making leasing arrangements and will soon revert back with a few proposals.
2. Developer has decided that whatever commitment charges (50%

of amount as agreed in the agreement) were being paid till now are also being stopped immediately as company cannot continue to pay it from its own pocket for the idle lying shops.

3. On being asked about the reasons thereof, they bluntly said that shop owners are free to take any recourse as deemed by them as the company has consciously taken a decision not to pay any further commitment charges, any further.
 4. Such a shocking and surprising communication all of a sudden meant another betrayal by developer on yet another illogical reasoning, as the same is a written condition of this purchase of shop as per agreement. Shop owners felt not only outraged, cheated and defrauded once again.
 5. This also meant developer has no respect for any written agreement or applicable law in force.
- s. That after repeated telephonic follow ups with developer the above shocking communication was in complete contradiction to various communications by developer assuring to commitment charges, shop owner finally wrote an email dated 25.10.2023 seeking reasons for stopping the payment of commitment charges suddenly after 14-02-2023. Any reply to all these follow ups are still remain ignored by the developer.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s)
 - a. Direct the respondent to immediately pay the not paid or short paid commitment charges.

- b. Direct the respondent to refund of Rs. 45,016/- collected wrongly by the developer in the name GST on payment of EDC/IDC on 21.01.2020.
 - c. Direct the respondent to handover of the shop as the respondent has not yet put the shop on lease and direct the respondent to convert the shop in to a lockable unit.
 - d. Direct the respondent to pay compensation.
 - e. Direct the respondent to not to levy / recover any common area maintenance charges for a period of two years from the day they are handed over physical possession and developer also clears all the old outstanding dues and interest accrued thereon.
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.
- a. That the complainant took the allotment of non-lockable unit no.1 on ground floor, tower c of project named 'the plaza at 106-1' Sector-106, Gurugram (the 'Unit') vide agreement dated 23.01.2020
 - b. That That the construction of aforesaid project got completed on 28.11.2019 and respondent offered possession of the unit to complainant on 27.12.2019. The complainant was invited for execution and registration of conveyance deed of the aforesaid unit upon payment of stamp duty and other charges vide letter dated 03.02.2020. In furtherance of aforesaid letter dated 03.02.2020, the complainant was again invited for registration of conveyance deed of

the aforesaid unit upon payment of stamp duty and other charges vide letter dated 27.01.2021. Further, despite the receipt of aforesaid letter for registration of conveyance deed, the complainant has intentionally lingering the execution and registration of conveyance deed of the aforesaid unit till date. Admittedly, **respondent has already paid a sum of Rs.9,46,125/- to complainant towards commitment charges.** It is submitted that the complainant is not entitled to commitment charges for any period affected by Covid-19.

- c. That if the complainant's commitment charges, is calculated as per stipulations as contained in Note No. 9 of Schedule C of Developer Buyer Agreement dated 23.01.2020, shall be as under: -

Table-A

S. No.	Particulars	Amount (Rs.)
A	Commitment charges payable for 36 months w.e.f. 01.06.2020 till 30.05.2023* @Rs.81/- X 805 (super area) = Rs.65,205/- p.m. X 36 months (*as per annexure No.9 placed on record by complainant at page 91 of the compliant).	23,47,380
B	Amount already Paid (as per ledger statement annexed herewith as Annexure R-4)	9,46,125
C	Balance commitment charges [A- B] shall be payable after leasing of aforesaid unit.	14,01,255*

- d. That the respondent has already paid a sum of Rs.9,46,125/- towards commitment charges without leasing of the aforesaid Unit till date and therefore, *balance commitment charges, if any shall be paid by

the respondent after leasing of aforesaid unit. Further, after expiry of committed period (36 months) the respondent shall not be liable to pay any money to the complainant and the complainant shall be entitled to actual rent proportionate monthly rent paid by tenant in terms of note no.9 of schedule C of developer buyer agreement dated 23.01.2020 subject to leasing of the unit. **The type of unit allotted to the complainant is non-lockable unit for which the agreement has already been executed on 23.01.2020. The unit of the complainant cannot be converted into lockable unit.**

7. 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 submission made by the parties.

E. Jurisdiction of the authority

8. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

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

10. 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) *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.

11. 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 complainant.

F.1 Direct the respondent to immediately pay the not paid or short paid commitment charges.

12. In the present matter the complainant was allotted a shop on 17.06.2019 shop bearing no. Shop no. 1, Ground floor, T-C in the project namely The Plaza located in sector 106, Gurugram for a total sale consideration of ₹89,52,566/- As per clause 9 of schedule C of the agreement dated

- 23.01.2020 it was promised and assured to the complainant if unit is a retail unit and is situated on Ground Floor:- ₹81/- per month per square feet of super area of unit (inclusive of all Taxes) for a period of thirty six months (i.e., committed period) with effect from date of offer of possession of unit by promoter. Further on 07.03.2020 at page 92 of complaint, the respondent sent letter to complainant stating that since they are working on finalizing leasing arrangements, therefore payment of commitment charges effective from 28.11.2019, will now start effective from 01.06.2020.
13. Also, the respondent in its reply has categorically agreed that the committed charges were to be paid by the respondent w.e.f. 01.06.2020 till 01.06.2023 to the tune of ₹ 23,47,380/- and the respondent has paid ₹9,46,125/-. Further the respondent agrees that the an amount of ₹14,01,255/- is pending on part of respondent to be paid on account of committed charges accordingly, the authority hereby directs the respondent to pay the committed charges to the complainant at Rs. 81/- (Rupees Eighty One Only) per month per square feet of super area of unit for a period of three years from 01.06.2020 after adjusting the amount already paid by the respondent to the complainant on account of committed charges within 30 days from the date of this order as already agreed upon by the respondent in his reply.
- F.II Direct the respondent to refund of Rs. 45,016/- collected wrongly by the developer in the name GST on payment of EDC/IDC on 21.01.2020.**
14. The above said issue has not been pressed by the counsel for the complainant during the course of hearing and accordingly the authority cannot deliberate upon the said issue.

F.III Direct the respondent to handover of the shop as the respondent has not yet put the shop on lease and direct the respondent to convert the shop in to a lockable unit.

15. In the present case in hand the occupation certificate was obtained on 28.11.2019 and the offer of possession was offered to the complainant on 27.12.2019. Vide proceedings dated 02.08.2024 the counsel for the respondent stated at bar that the buyer's agreement was an agreement of virtual space and physical possession was never to be given. Also as per clause 9 and 10 of schedule C of the buyers' agreement the same is shown that the unit is for leasing. Therefore no handover is to be given by the respondent in this case.
16. The counsel for the respondent had already requested for getting conveyance deed on 03.02.2020. 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.
17. Since the possession of the subject unit has already been offered after obtaining occupation certificate on 27.12.2019. The respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.

F.IV Direct the respondent to pay compensation.

18. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357

held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

F.V Direct the respondent to not to levy / recover any common area maintenance charges for a period of two years from the day they are handed over physical possession and developer also clears all the old outstanding dues and interest accrued thereon.

19. The respondent after obtaining occupation certificate has offered the possession to the complainant on 27.12.2019. As per clause 11 of the buyer's agreement the complainant is obligated to pay common area maintenance charges.

11 MAINTENANCE OF THE SAID BUILDING / UNIT/PROJECT:

The Promoter shall be responsible to provide and maintain essential services in the Project till the handing over of the maintenance of the project to the association of allottees. The cost of such maintenance services, common services and facilities in the Project/Building/Complex shall be payable by allottee to the Promoter/Maintenance Agency with effect from date of offer of possession of Unit by Promoter till taking over of the maintenance by association of allottees. It is clarified that with effect from date of offer of possession of Unit by Promoter, Allottee shall amongst others, bear proportionate cost of maintaining parks, cleaning & upkeep of common areas, lightning of common areas, air-conditioning of common areas (if provided), security, insurance of building, etc.

11.2 With effect from date of handing over of possession of Unit by promoter, allottee shall bear cost of utilities (like electricity, water, etc.) consumed in the Unit.

20. The authority observes that the respondent is entitled for common area maintenance charges from the complainant from date of offer of possession of unit by promoter till taking over of the maintenance by association of allottees. But since the respondent vide letter dated 07.03.2020 has specifically mentioned that common area maintenance charges shall not be charged before 30.05.2020 accordingly, any amount charged on account of it before 30.05.2020 shall be adjusted afterwards.

G. Directions of the Authority:

21. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:


- a) The authority hereby directs the respondent to pay the committed charges to the complainant at Rs. 81/- (Rupees Eighty One Only) per month per square feet of super area of unit for a period of three years from 01.06.2020 after adjusting the amount already paid by the respondent to the complainant on account of committed charges as already agreed upon by the respondent in his reply within 30 days from the date of this order.
- b) The respondent is entitled for common area maintenance charges from the complainant from date of offer of possession of unit by promoter till taking over of the maintenance by association of

allottees. Accordingly, any amount charged by the respondent prior to offer shall be adjusted afterwards.

c) The respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.

22. Complaint stands disposed of.

23. File be consigned to the registry.



(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.08.2024

HARERA
GURUGRAM