

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

Complaint no.	:	2586 of 2023
Date of filing		08.06.2023
complaint:		
Date of decision		12.07.2024

Neeraj Kumar R/O: Gali No. 24, Rz-344, Gopal Nagar, Saraswati Enclave, Najafgarh, South West Delhi- 110043	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 (ins 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.	22, FF-Floor, Tower B (Page 50 of complaint)
7.	Unit area admeasuring	208 sq. ft. carpet area 238 sq. ft. covered area 474 sq. ft. super area (Page 50 of complaint)
8.	Buyers Agreement (registered)	12.09.2019 (Page 29 of complaint)
9.	Possession clause	7. Possession of the unit: The Promoter agrees and understands that timely delivery of possession of the unit to the allottee is the essence of the agreement.



		<p>The promoter based on the approved plans and specifications assures to handover possession of the unit by the date mentioned at serial no. 20 in Schedule A unless there is delay due to Force Majeure Conditions.</p>
10.	Commitment charges	<p><i>Clause 9.of schedule C of BBA</i></p> <p><i>Commitment Charges: Irrespective of anything contrary contained in the body of agreement, Promoter shall (through WTC 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</i></p> <p><i>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</i></p>

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 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.

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>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>
11.	Due date of possession	31.12.2021 + 6 months on account of Covid-19= 31.06.2022
12.	Total Sale consideration	₹ 35,04,633/-
13.	Amount paid by the complainant	₹ 35,31,140/- (as alleged by complainant)
14.	Occupation certificate	28.11.2019 (As per DTCP website)
15.	Offer of possession	30.11.2019 (as alleged by the respondent)
16.	Conveyance Deed	17.02.2020 (page no. 65 of complaint)
17.	Possession certificate	25.11.2021 (page no. 9 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
- That the respondent company promised and emphasized upon by the representatives of the respondent that the complainant will get assured monthly rental charges (commitment charges) every month after getting the possession of the unit. The complainant booked a unit in the said project bearing unit no. 22, first floor in Tower-B, upon paying the requisite amount for booking and thereafter a builder

- buyer agreement dated 12.09.2019 was executed between the parties.
- b. That vide agreement dated 12.09.2019, the complainant was allotted with lockable unit no. 22, situated on first floor, Tower-B, having super area 474 sq. ft. and carpet area of 208 sq. ft., at Plaza at 106-1, commercial project, sector-106, Gurugram- 122006 from the respondent.
- c. That as per the clause no. 9 of Schedule C- payment plan of the agreement dated 12.09.2019 it was promised and assured to the complainant that the promoter is obligated to pay an amount of Rs. 73/- per sq. ft. per month of super area of the unit which will be paid as commitment charges to the owner of the complainant. It was categorically assured by the respondent that the complainant will receive assured minimum monthly rental from sub-leasing of the unit for a period of minimum 36 months with effect from the date of possession. That as per the terms and conditions laid down in the agreement dated 12.09.2019 and stated in clause 8 of Schedule "C" to agreement, the payment of commitment charges was supposed to commence with effect from January 2020.
- d. That further upon receiving all the payments from the complainant successfully, a conveyance deed dated 17.02.2020 was executed and duly registered with the office of Sub-Registrar Kadipur, Gurugram bearing conveyance deed registration no. 13804, Book no-1, upon payment of stamp duty amounting Rs. 1,27,500/- and registration charges of Rs. 15,000/- and all the other charges by the complainant.

- e. That since the month of January 2020, which the effective date for starting of the commitment charges towards the unit of the complainant, the complainant upon seeing defaults on the end of the respondent, started requesting and sending reminders to the respondent to perform their legal obligations and start paying commitment charges to the complainant as promised but the requests of the complainant fell on deaf ears as the respondent kept on delaying the payments on one pretext or another.
- f. That the respondents are obligated and bound to pay an amount of Rs. 34,602/- per month as per terms of the agreement dated 12.09.2019 and the assurances given by the respondent. However, to the utter shock and dismay of the complainant, the respondent disbursed an amount of Rs. 16,003/- for the first time towards payment of commitment charges in the month of July 2020 which was to be paid in the month of January 2020 as per the terms of the agreement dated 12.09.2019. The respondent made delay in making payment of the commitment charges and decided to pay short amount to the complainant and force the amount on the complainant without taking his due consent, which has varied from time to time in different months and is in complete violations of the agreed terms and conditions of the agreement dated 12.09.2019.
- g. That the complainant, upon raising concerns and objections to the delay in payment and short payments of commitment charges by the respondent, ran from pillar to post to get his rightfully owed commitment charges but the respondents paid no heed to hues and cries of the complainant and kept on forcefully making short

payments of commitment charges as per their own whims and fancies. That after taking up the issue with the respondent on multiple occasions in physical meetings also, the respondent issued a letter addressing the complainant specifically and expressly admitting their liability of making payment of commitment charges at the rate of Rs. 73/- per sq. ft. per month on the super area of the unit to the complainant, again assured the complainant that the outstanding amount of commitment charges including the short amount paid till now shall be paid to the complainant in 26 equal instalments commencing from May 2022 and further as a part of this method of making payment of due amount, the respondent confirmed that the complainant will not be charged annual maintenance (CAM) till may 2024. However, the complainant has only received a sum of total Rs. 5,49,659/- till now there is a deficiency of Rs. 6,96,013/- being the principal outstanding amount of commitment charges to be paid by the respondents.

- h. That the total consideration was paid by the complainant considering that the facility of a dedicated and independent car parking space will be provided, which was to be allotted to the owner of each unit. However, to the contrary and utter shock to the complainant, the respondent acted as per their own convenience and later modified the dedicated car parking of each allottee to a stacked mechanical two level car parking without discussing this with the allottees or independently with the complainant and without taking their due consent before making changes to the parking plan which is in complete violations of the terms and conditions of the agreement

dated 12.09.2019. Though the complainant is allotted with an independent parking space but the change in the parking plan casts the burden of paying increased maintenance charges in future in case of malfunctioning of the stacked mechanical two level parking which is detrimental to the interest of the complainant.

- i. That the complainant left with no other alternative and tortured by the malafide acts of the respondents, through his counsel sent a legal notice dated 19.05.2023 calling upon the respondents to comply with the terms of the agreement dated 12.09.2019 and pay the outstanding commitment charges at the earliest, but to no surprise of the complainant, the respondent again failed to comply with the terms of the agreement or give any response against the legal notice dated 19.05.2023.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s)
 - a. Direct the respondent to pay Rs. 6,96,013/- towards the complete payment of commitment charges from the month of July 2020 till June 2023 along with interest on the delayed payment of the commitment charges as per prescribed rate.
 - b. Direct the respondent to pay pendent lite interest in favour of the complainant as per the interest rates.
 - c. Direct the respondent to pay interest @ 9% p.a. on the total amount received from the complainant i.e., ₹ 35,31,140/- for delay in payment of commitment charges as promised with effect from 01.01.2020 till June 2020, the date when the first part payment of the commitment

charges was honored by the respondent in favour of the complainant after lapse of more than 6 months.

d. Award of Rs. 2,00,000/- for legal cost.

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

D. Reply by the respondent.

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

- a. That instant complaint is neither maintainable in law nor on facts. Instant complaint is without cause of action, bad for delay and laches and has been filed with malafide. Therefore, instant complaint is not maintainable and is liable to be rejected at the outset.
- b. That the complainant took the allotment of unit no.22 on 1st Floor, Tower B-2 of project named 'The Plaza at 106-1' Sector-106, Gurugram the 'unit' vide agreement dated 12.09.2019.
- c. That the construction of the aforesaid project got completed on 28.11.2019 and respondent offered the possession of the unit to complainant on 30.11.2019.
- d. That the complainant got the conveyance deed of the unit executed and registered on 17.02.2020. In contradiction to the aforesaid clause relating to commitment charges, complainant took the physical possession of the unit, from the respondent on 25.11.2021. It is submitted that after taking physical possession of the unit, the complainant cannot claim commitment charges from the respondent as the unit is no longer available with the respondent for further leasing.

- e. That the respondent has already paid a sum of Rs.6,05,931/- to complainant towards commitment charges. It is submitted that the complainant is not entitled to commitment charges for any period after the complainant took over the physical possession of the unit and for the period affected by Covid-19. As complainant is also not entitled to commitment charges because the complainant and other allottees did not accept various leasing offers.
- f. The instant complaint is barred by estoppel. It is submitted that upon execution of conveyance deed dated 17.02.2020, the complainant is now estopped from raising these belated claims/demands. Further vide clause 8(i) of the conveyance deed it was further agreed that "*this deed constitutes complete agreement and understanding between the parties on the subject hereof and supersedes all prior offers, brochures, negotiations and/or agreements, either written or oral.*"
- g. That after handing over of possession and the execution of conveyance deed, disputes relating to commitment charges are beyond the jurisdiction of this Hon'ble Authority.
- h. The complainant got the conveyance deed registered in his favour on 17.02.2020 for said unit and acknowledged that he has taken over the possession satisfactorily and is left with no claims including the claim for commitment charges. The complainant is thus, estopped from his own act and conduct to file the instant complaint.
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. I 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 complainants.

F.I Direct the respondent to pay Rs. 6,96,013/- towards the complete payment of commitment charges from the month of July 2020 till June 2023 along with interest on the delayed payment of the commitment charges as per prescribed rate.

12. In the present matter the complainant purchased a unit bearing no. 22, FF-Floor, Tower B in the project namely The Plaza located in sector 106, Gurugram for a total sale consideration of ₹ 35,04,633/-. As per clause 9 of schedule C payment plan of the agreement dated 12.09.2019 it was promised and assured to the complainant that the promoter is obligated to pay an amount of Rs. 73/- per sq. ft. per month of super area of the unit which will be paid as commitment charges to the complainant.

13. The complainant stated that the respondent paid an amount of ₹16,003/- for the first time in the month of July 2020. However the respondent in its reply stated that they had paid an amount of ₹6,05,931/- towards commitment charges. The complainant is here before the authority seeking commitment charges as promised.

14. Now, the question that arise before the authority is that whether the authority is well within its jurisdiction to decide the issue of committed charges. After due consideration of the documents placed on record, the authority is of the view that the obligation of respondent to pay the

committed charges is merely a contractual obligation which the respondent was obligated to perform but in absence of violation of any provisions of the Act, 2016 thereof.

15. Accordingly, the authority observed that the present relief sought by the complainant is not maintainable for two fold reasons. Firstly, the complainant has failed to prove as to what provisions of this Act, or rules & regulations made thereunder has been violated by the respondent herein. Secondly, payment of committed charges on the basis of which the present complaint has been filed by the complainant is not in the nature of the delay possession charges as covered under section 18 of the Act, 2016. The committed return being paid by the respondent to the complainant allottee was much before the due date of possession which clearly shows the complainant has invested his money to get return on monthly basis which is merely a commercial transaction between them. Moreover, the committed charges is neither defined in the Act, 2016 nor in the rules, 2017.
16. In the light of the aforesaid provisions and above stated reasons, the present relief stands dismissed as not maintainable with a liberty to the complainant to approach the appropriate forum for redressal of his grievance.

F.II Direct the respondent to pay pendent lite interest in favour of the complainant as per the interest rates.

F.III Direct the respondent to pay interest @ 9% p.a. on the total amount received from the complainant i.e., 35,31,140/- for delay in payment of commitment charges as promised with effect from 01.01.2020 till June 2020, the date when the first part payment of the commitment charges was honored by the respondent in favour of the complainant after lapse of more than 6 months.


17. In the present case in hand the complainant booked a unit no. 22 in tower B in the project 'The Plaza' situated in sector 106, Gurugram. The buyer's agreement was executed between the parties on 12.09.2019. As per clause 7 of the buyer's agreement, the possession was to be given by the date mentioned at serial no. 20 in Schedule A of the buyer's agreement. The due date of possession from the serial no. 20 mentioned in schedule is 31.12.2021. **Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.** The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 31.12.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to 31.06.2022.
18. The occupation certificate for the subject unit has been obtained by the respondent promoter on 28.11.2019 and the possession has been offered to the complainants on 30.11.2019 i.e., much before the due date of possession. Moreover, the conveyance deed was executed between the parties on 17.02.2020. Thereafter, the possession certificate was also issued to the complainant before the due date of possession i.e., on 25.11.2021.
19. Since, the possession of the unit has already been handed over by the respondent to the complainant much prior to the due date of possession accordingly, the complainant has not suffered any delay and is not entitled

for any delay compensation under section 18 of the Act, 2016. In light of the above facts the present relief stands dismissed.

F.IV Award of Rs. 2,00,000/- for legal cost.

20. 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.
21. In light of the above mentioned findings of the authority, all the reliefs are denied in toto therefore, the present complaint stands dismissed.
22. Files be consigned to registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.07.2024