

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

Complaint no.	:	3502 of 2023
First date of hearing:		23.11.2023
Date of Decision:		12.09.2024

1. Smt. Jyoti Puri
2. Sh. Sushil Puri

Complainants

Both R/o: H. No. – 357, Sector – 21, Gurugram – 122
016, Haryana

Versus

M/s Magic Eye Developers Private Limited
Regd. Office at: GF-09, Plaza-M6, District
Centre, Jasola, New Delhi- 110 025

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Sushil Puri (Advocate)

Complainants

Shri Gaurav Rawat (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name and location of the project	"Plaza at 106-I", Sector 106, Gurugram
2.	Nature of the project	Commercial
3.	Project area	3.725 acres
4.	DTCP license no.	65 of 2012 dated 21.06.2012 valid up to 21.06.2022
5.	Name of licensee	Magic Eye Developers
6.	RERA Registered/ not registered	72 of 2017 dated 21.08.2017 valid up to 31.12.2021
7.	Unit no.	30, Ground Floor & Tower-B (As per page no. 121 of the complaint)
8.	Unit area admeasuring	655 sq. ft. (Super area) (As per page no. 121 of the complaint)
9.	Welcome letter	15.04.2019 (As per page no. 82 of the complaint)
10.	Date of execution of agreement	18.06.2019 (As per page no. 92 of the complaint)
11.	Possession clause	7. POSSESSION OF THE UNIT <i>7.1 Schedule for possession of the said Apartment: The developer agrees and understands that timely delivery of possession of the unit to the allottee is the essence of the agreement. 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. If, however, the completion of the project is delayed due to force majeure conditions then the allottee agrees that the promoter shall be entitled to the extension of time for delivery of possession of the unit, provided that such force majeure conditions are not</i>

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		<p>of nature which make it impossible for the contract to be implemented. (As per page no. 99 of the complaint)</p>
<p>12.</p>	<p>Commitment charges</p>	<p>Clause 9.of schedule C of BBA 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. 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</p>



		<p>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</p> <p>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.</p> <p>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</p> <p>(As per page no. 113 of the complaint)</p>
13.	Due date of possession	30.06.2022 (As per RERA registration plus 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or

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		after 25.03.2020)
14.	Total sale consideration	Rs.79,30,750/- (As per page no. 84 of the complaint)
15.	Amount paid by the complainant	Rs.79,78,960/- (As per receipt information on page no. 81, 85-86, 88-91 & 123-127 of the complaint)
16.	Occupation Certificate	28.11.2019 (As per page no. 121 of the complaint)
17.	Offer of possession	27.12.2019 (As per page no. 121 of the complaint)
18.	Conveyance Deed	25.09.2020 (As per page no. 158 of the complaint)
19.	Legal notice seeking recovery of arrears of commitment charges	10.07.2023 (As per page no. 9 of the complaint)
20.	Date of lease deed with Instakart to lease the unit for 3 years i.e., from 05.07.2021 to 04.07.2024	05.07.2021 (As per page no. 202 of the complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions:

- I. That the 'promoter' M/s Magic Eye Promoters Private Limited with their registered office at GF - 09, Plaza - M6, Jasola District Centre, Jasola, New Delhi-110 025 is a private limited company incorporated under the Companies Act, 2013 and is involved in the business of developing and constructing real estate projects of different categories.
- II. That the promoter owned a piece of land admeasuring 3.725 acres on which they constructed a commercial project namely "PLAZA at 106-1" situated at Sector - 106, Gurgaon after obtaining license from DTCP bearing no. 65 of 2012 dated

- 21.06.2012. The said project is also registered with RERA bearing registration no. 72 of 2017 dated 21.08.2017.
- III. That the complainants Mrs. Jyoti Puri and Mr. Sushil Puri both residents of H. No. 357, Sector - 21, Gurugram-122 016, Haryana purchased a lockable retail shop no. - 30, measuring 655 sq. ft. Super Area (Carpet Area of 291 sq. ft. & Covered Area of 328 sq. ft.) at ground floor of Tower B in the project.
- IV. That the promoter's through its 'Channel Partners' M/s Orion Realtors (respondent no. 5) and Mr. Kuldeep Singh Chauhan, Sales Manager of the promoter also signed and accepted the booking form along with its agreed terms and conditions on 08.04.2019. A cheque dated 28.03.2019 drawn on ICICI Bank for Rs.2,00,000/- was received from complainants as booking amount and payment receipt was issued by promoter on 15.04.2019.
- V. That between booking the shop and signing of developer buyer's agreement (DBA) or agreement, the promoter issued allotment letter, customer ID, demand letters and issued payment receipts for the amount paid by the complainants from time to time.
- VI. That apart from what has been detailed above, all the terms and conditions of the sale/purchase of said property were reiterated and detailed once again in the developer buyer's agreement between complainants and promoter which was signed and registered on 18.06.2019, included following main terms and conditions of the purchase of property:
- a. Shop owners shall pay total consideration towards purchase of the shop as well as covered car parking as demanded by promoter as per the payment plan as agreed vide the booking form / agreement.

- b. The buyer must promptly pay all the demands raised by promoter from time to time as specified in the payment plan / agreement. That any delay in making payments demanded within the time period allowed by promoter was subject to a payment of interest (refer clause 9.3 of the DBA).
- c. The promoter upon receiving the 'Occupation Certificate' from the government authorities shall make an 'Offer of Possession' to Shop Owners and will be liable to start paying monthly commitment charges or assured return to shop owners @ Rs.81/- per sq. ft. per month on super area for 36 months. The promoter shall be allowed to let out the lockable retail unit on lease to an appropriate retail brand on behalf of shop owners (refer note 9 of Schedule C of the DBA).
- d. This also clearly meant that the amount of commitment charges payable by promoter over the period of 36 months had already been factored in the sales price charged by promoter for the shop from buyer, upfront.
- e. That the purchase of shop mandated a compulsory purchase of a covered car parking for all units sold in tower B @ Rs.3,00,000/- plus applicable GST and was also subject to stamp duty @ 6% thereon when the sale deed for the property was registered later.
- f. That though the shop owners were forced (despite their unwillingness) to mandatorily purchase a covered car parking, if the unit is a lockable in tower B of the project. But later it was discovered that there are many property owners who were exempted to pay for the covered car parking, as they did not want to buy it. So the much touted mandatory purchase is a big lie.

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- VII. That the respondent/promoter through a letter dated 27.12.2019 sent to complainants a 'Demand cum Offer of Possession' claiming to have received 'Occupation Certificate' from the concerned government authorities. The letter asked the complainants to pay (after deducting the already paid amount of Rs.34,63,323/-) the entire outstanding payment of Rs.44,92,264/- latest by 25.01.2020.
- VIII. That the promoter had wrongly charged GST on External Development Charges (Rs.33,484/-) and Internal Development Charges (Rs.3,144/-), both being government levies and therefore not subject to levy of GST. The complainants pointed it out to promoter and after acceptance of the error by promoter company, the complainants paid the correct outstanding of Rs.44,55,636/- well before the due date i.e., 15.01.2020 (inclusive of applicable TDS @ 1% thereon which was deposited with the Income Tax department and Form 16B issued to the promoter) to the promoter, duly acknowledged vide their various money receipts dated 21.01.2020.
- IX. That the promoter sends demand letter to the complainants to pay for registration charges and other costs vide their letter dated 03.02.2020. That on 07.03.2020, immediately after collecting the entire payment for the shop, the promoter quickly sends a letter to the complainants 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.
- X. That in response to promoter's letter dated 07.03.2020, the complainants very strongly rejected postponement of payment of commitment charges to 01.06.2020 during 12.03.2020 to

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21.04.2020 through letters, emails etc. That on 24.03.2020 Covid-19 nationwide lockdown announced by the Central Government. That 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.

- XI. That the promoter soon could sense another good opportunity, who has 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 the complainants titled 'Important Communication' through which once again 'announced' unilaterally and arbitrarily further postponement of payment of commitment charges till June 2021. That on 06.06.2020, promoter through another email not only reiterated postponement of payment of commitment charges but also shared through a passing comment w.r.t invocation of force majeure clause by government authorities trying to legitimize the postponement of payment of commitment charges.
- XII. That on careful reading of the government circulars, notifications and guidelines issued through its various limbs, promoter soon realized that the conditions under which invocation of force majeure clause was allowed did not cover situations like payment of commitment charges to the complainants therefore, promoter 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 the complainants 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. This was nothing but a desperate attempt on the part of promoter to somehow take benefit in the name of Covid-19 assuming that the complainants will either not raise any objection because the complainants 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 them.

XIII. That the promoter was under contractual obligation to have proactively worked and put in place leasing arrangements with potential retail brands, ideally even before the offer of possession was made, this could have saved him from bearing the cost of commitment charges himself but he did nothing to finalize any such arrangement in time and in fact till today i.e., July 2023 nothing visible has been done by promoter in this regard. The entire project even after more than 3.5 years of offer of possession still looks completely deserted without even a single shop operating out from there. On top of this even on semi-commercial studio and residential apartments, it is hardly occupied by more than 5% of the unit owners / tenants. Promoter's intention was clearly never to fulfil any of his commitments made in our registered or other written agreements.

XIV. That in blatant violation of terms and conditions of DBA and ignoring strong protests and rejections by the complainants, promoter started paying commitment charges @ 50% of originally agreed amount effective 01.06.2020 and continued it till 30.09.2021.

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- XV. That in the interim after receiving entire payment for the said shop, the promoter issued possession of the shop on a plain paper to the complainants including that of a covered car parking space on 07.08.2020 and the complainants were asked / made to sign the same without giving any physical possession or keys thereof without any kind of inspection of the shop.
- XVI. That the complainants upon receipt of a call vide letter dated 03.02.2020 asking them to pay due stamp duty and other registration charges/costs, paid and got the conveyance deed registered in their name on 25.09.2020.
- XVII. That when the complainants visited the site to see the shop in December 2020, to their surprise they found promoter had opened the shop and operating his sales cum CRM office in two adjoining shops number GF-B-30 (the complainants shop) and 31 respectively. On enquiry the staff working there shared that these shop are operational from past 5 months. This was done without any intimation, permission or approval from us. The complainants lodged a protest in this regard on email followed up through a couple of reminders. However, thereafter they were verbally told that since the commitment charges are being paid by promoter and shops are lying vacant, so promoter has decided to open their office there. The office was vacated only in June, 2021, when shops were leased by promoter to a warehousing company. This effectively meant promoter using the two shops for their office for one full year without paying any market rent. Till then anyways he was paying only 50% of the commitment charges.
- XVIII. That after sustained follow up by the complainants, promoter issued a revised covered car parking allotment letter for parking no UB-12A on 23.03.2021. That upon visiting to see the newly

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allotted car parking space, the complainants were surprised to find that there is no car parking number UGF-12A on the ground as there were car parking numbers such as 12, 13, 14 and so on. In addition barring around 5% of the covered car parking are independent single covered car parking spaces and all other car parking spaces were allotted as stack parking i.e., 2 car parking stacked on top of each other operated mechanically. This effectively meant one car space sold (against collection of complete cost of Rs.3,00,000/- applicable GST and stamp duty thereon) to two unit owners.

XIX. That this was clearly against the terms of allotment letter, DBA, offer of possession or demand letters which always referred it to be covered car parking and not stack covered parking. It is very important because there is a sea change in both these types of car parkings in terms of its price, stamp duty and operational methodology. Mechanically operated stack car parking will definitely require permanent enhanced cost of operation.

XX. That this issue was clearly not acceptable and was discussed telephonically as well as in person at multiple occasions but shop owners were always assured that a new and independent covered car parking is being found so that it can be allotted to shop owners soon. But having not received any favorable response finally started raising the issue formally through emails as was already allotted to some other shop keepers already. That On the other side shop owner's entire family including co-owner was fighting for his life, since November 13, 2019 as he was suffering from a critical kidney disease and was on alternative day kidney dialysis, extreme weakness, multiple hospitalizations for life threatening complications including 3 major surgeries and long



drawn treatment which continues even now i.e., after undergoing kidney transplant on April 9, 2021, the family continued to reject, protest and follow up rigorously with promoter through all possible means such as telephonic calls to their customer care department, emails, posted written letters, and later after the situation improved a bit, met them personally several time individually as well as in a group of other affected shop owners, but it did not yield any result.

XXI. That once situation (Covid-19 as well as health of the co-owner) started improving, promoter dropped another shocker by sending a letter dated 13.08.2021 to the complainants that he has leased 13 adjacent retail shops located at most premium location on ground floor after converting them into a virtual space by removing dividing walls, electrical wiring and wet connections etc. to M/s Instakart Services Private Limited for their warehousing and freight forwarding business through an illegal and unauthorized lease agreement signed by them on behalf of these 13 shop owners effective 05.07.2021.

XXII. That this was not only illegal but unauthorized and unilateral (to convert lockable premium ground floor retail shop into a virtual warehouse) without taking any kind of permission from the affected shop owners. Not even a prior intimation or discussion was carried out by promoters to shop owners. After receiving this intimation letter on 14.08.2021, the complainants rushed to visit and see the status of shops on 15.08.2021. The complainants were further shocked to find the shops already converted into a virtual warehouse, duly handed over and occupied by M/s Instakart Services Private Limited along with the cheap quality white stone flooring completed.

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- XXIII. That as expected, this invoked a strong reaction from shop owners where they rejected the entire lease agreement and asked the promoter to ensure vacation of their shop immediately with restoration of the same back to its original form into a lockable unit. A formal letter dated 16.08.2021 (along with email communications on the same till 21.08.2021) was sent to promoter by speed post rejecting this illegal agreement which was also full of mischief, intentional cheating and trying to stop paying them commitment charges through means.
- XXIV. That upon outright rejection of the proposed lease arrangement by the complainants and asking them to get the premises vacated immediately and restored to its original form, the respondent invited the complainants to resolve the impasse amicably.
- XXV. That the complainants during these meetings were further informed (verbally) the terms of the lease agreement as following facts:
- Lock-in period for shop owners is 3 years with no right to seek vacation of premises from tenant under any circumstances.
 - Tenant (Lessee) shall be allowed to vacate the premises by giving 2 months' notice, without providing any reason therefore.
 - Rent free fit out period of 3 months is allowed by lessors to the lessee therefore payment of revised rent shall start effective 01.10.2021.
- XXVI. That consequent to revised discussions and negotiations the following was agreed to salvage the situation as the premises had already been converted into a virtual warehouse space occupied

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by the tenant after removal of walls etc. which meant lockable form of retail shops converted into virtual space.

- The lease rental or commitment charges (by whatever name called) shall be paid by promoter to shop owners @ Rs. 81/- per sq. ft. per month on super area of the unit.
- Internal improvement charges of Rs.1,05,892/- would be recovered by promoter from monthly commitment charges or rent paid by promoter over the next 33 months i.e., during 01.10.2021 to 04.07.2024.
- Lease with M/s Instakart Services Pvt. Ltd. shall be valid only for a period of 3 years effective from 05.07.2021 and will end on 04.07.2024. No extension or renewal of lease deed will be permitted without the written permission of shop owners.
- The revised letter confirming these terms was sent by respondent to the complainants vide their letter dated 04.10.2021.

XXVII. That, despite the complainants continuing to ask for a copy of the lease agreement signed with the lessee, the respondent did not share a copy thereof on one pretext or the other until end of April 2022, when the same was shared (after much insistence) during one of the physical meetings they were having in promoter's office.

XXVIII. That the complainants repeated requests through emails along with an agenda of issues to discuss with MD of the company they were ultimately had a meeting on 21.04.2023 in the office of promoter, 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.

XXIX. That this actually established beyond any doubt that the intentions of respondent from the very beginning have never been truthful, above board or trustworthy but they have actually been resorting to cheating and fraud with the complainants by making false promises, written and registered agreements without any sense of respect for any law or intention to abide by or adhere to terms and conditions agreed.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondent company to immediately pay the not paid or short paid commitment charges.
 - ii. Direct the respondent to allot an independent covered car parking in place of the mechanical stack car parking already allotted or refund the cost paid for covered car parking i.e., Rs.3,54,000/- (including GST and stamp duty @ 6%) along with interest.
 - iii. Direct the respondent to pay a sum of Rs.2,00,000/- towards the cost of legal notice and litigation and compensation for causing mental and physical harassment to the complainants.

D. Reply by the respondent no. 1:

5. The respondent contested the complaint on the following grounds:
- a. That the complainants took the allotment of unit no. 30 on ground floor, tower B of project named 'The Plaza at 106-I' Sector-106, Gurugram vide agreement dated 18.06.2019.
 - b. That construction of aforesaid project got completed on 28.11.2019 and respondent offered possession of the unit to complainants on

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30.11.2019. The complainants got the conveyance deed of the unit executed and registered on 25.09.2020.

- c. That a brand named Instakart contacted respondent for taking some area of the project (including complainants unit) on lease for a period of 3 years at a monthly rent of Rs.27/- per month per sq. ft. of super area with effect from 05.07.2021.
- d. That the parties discussed the offer of Instakart and arrived at a consensus through exchange of emails and vide letter dated 04.10.2021 (which was signed by complainants on 06.10.2021), whereby parties agreed as under:

"...In supersession of the Buyer's Agreement 18th June, 2019 and previous communications, it has agreed between you/the Complainant herein and us/the Respondent herein"

- *the Respondent will pay a sum of Rs.81/- per sq. ft. of super area of the allotted unit w.e.f. 01.10.2021 till 04.07.2024 which includes the actual rent of Rs.27/- per sq. ft. of super area paid by Instakart and balance Rs.54/- shall be borne by Respondent.*
- *After 04.07.2024 there shall be no obligations on Respondent to pay any money to the Complainant under any circumstances and you shall be entitled to actual proportionate monthly rent payable by tenant.*
- *Lumpsum amount of Complainant's share of Tenant Improvement Cost and brokerage in relation to lease of property to Instakart is Rs.1,05,892.37/- only which shall be adjusted proportionately from the rent/commitment charges payable to Complainant w.e.f. 01.10.2021 till 04.07.2024.*
- *Lease with Instakart is only for 3 years effective from 05.07.2021 till 04.07.2024.*

It submitted that the aforesaid amended terms and conditions were duly acknowledged and accepted by the complainants on 06.10.2021. It is submitted that there can be two methods for calculation of complainants commitment charges one strictly as per stipulations as contained in note no. 9 of Schedule C of developer buyer's agreement dated 18.06.2019 and other as per letter dated 04.10.2021.

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- e. That if the complainant's commitment charges, if 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 655 (super area) = Rs.53,055/- p.m. X 36 months (*as per annexure No. 20 placed on record by complainant at page 130 of the compliant).	19,09,980
B.	Amount already Paid (as per ledger statement annexed herewith as Annexure R-3)	15,07,304
C.	Balance commitment charges [A- B]	4,02,676
D.	Actual rental payable w.e.f. 05.07.2023 till 04.07.2024 @ Rs.27/- X 655 (super area)= Rs.17,685/- p.m. X 12 months	2,12,220
E.	Total rental/commitment charges payable till 04.07.2024	6,14,896

- f. That if the complainant's commitment charges, if calculated as per stipulations aforesaid letter dated 04.10.2021 (signed by the complainant on 06.10.2021), shall be as under:

Table-B

S. No.	Particulars	Amount (Rs.)
A.	Amount Payable w.e.f. 01.10.2021 till 04.07.2024 @Rs.81/- X 655 (super area) = Rs.53,055/- p.m. X 33 months	17,50,815
B.	Amount already Paid (as per ledger statement annexed herewith as Annexure R-3)	15,07,304
C.	Tenant Improvement Cost and brokerage adjusted from rental	1,05,892
D.	Balance Payable as on 04.07.2024	1,37,619

- g. That after execution of letter dated 04.10.2021, terms and conditions contained therein shall prevail. Therefore, complainant's commitment charges are to be calculated as per Table-B and not as per Table-A.

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- h. That as per serial no. 22 (d) of Schedule A of the agreement dated 18.06.2019, the complainants were required to pay a sum of Rs.3,36,000/- charges, per car for development of car parking area and in terms thereof, complainants have made the payment. It may be noted that respondent had been allotted car parking bay no.UB-12A. It is submitted that complainants have no right to reject this parking bay on the ground of it being a stack bay. It is submitted that there are no alternative parking bays for replacement of this bay no.UB-12A and the allotment of parking bay no. UB-12A, completely discharges respondent from its obligation in respect of allotment of car parking bay to complainants.
- i. That the instant complaint is barred by estoppel. It is submitted that upon execution of conveyance deed dated 25.09.2020, the complainants are now estopped from raising these belated claims/demands as they themselves had acknowledged and accepted that *"that they have received the possession of the said unit to their complete satisfaction and have signed the possession certificate in respect thereof. Vendee(s)/ complainant(s) herein further assured that they shall have no claim, whatsoever against the vendor/respondent including in respect of any defect or deficiency in construction or quality of materials used or on account of any delay, etc. and all such claim or objection, if any shall be deemed to have been waived off by the vendee.*
- j. That after handing over of possession and the execution of conveyance deed disputes relating to commitment charges are beyond the jurisdiction of the Hon'ble Authority.
- k. That the contents of paras of brief facts save the matter of record are wrong, false and hence denied. It is denied that the

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complainants are entitled for commitment charges of Rs.12,82,879/- or any interest accrued thereon on account of any alleged deficiency. Rather, conveyance deed stands executed, the unit of the complainants have been already leased out, resulting into discharge of respondent from its responsibilities towards the complainants.

1. That there is no cause of action which ever accrues or accrues at any point of time to file the instant complaint. It is denied that respondent has committed breach of its obligations. It is submitted that there being no cause of action, issues framed are wrong and false and therefore denied. It is submitted that the complaint under reply is barred by estoppel and is therefore liable to be dismissed. The territorial jurisdiction is not denied.
6. 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:

7. The objection raised by the respondent regarding rejection of complaint on ground of subject matter 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

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

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District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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

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(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.

8. 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 objections raised by the respondent:

F.I Objection regarding the complaint being barred by estoppel.

9. The respondent has raised an objection that the instant complaint is barred by estoppel as upon execution of conveyance deed dated 25.09.2020, the complainants are now estopped from raising these belated claims/demands as they themselves had acknowledged and accepted that "that they have received the possession of the said unit to their complete satisfaction and have signed the possession certificate in respect thereof. Vendee(s)/ complainant(s) herein further assured that they shall have no claim, whatsoever against the vendor/respondent including

in respect of any defect or deficiency in construction or quality of materials used or on account of any delay, etc. and all such claim or objection, if any shall be deemed to have been waived off by the vendee.

10. The Authority observed that though the conveyance deed has been executed on 25.09.2020 but as per proviso to section 18 of the Act of 2016, if the allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed. In the present complaint, the possession of the unit still remains with the respondent in lieu of the agreement dated 18.06.2019 read with letter dated 07.03.2020 for the purpose of leasing of the unit to the third-party by the respondent and the complainants intend to continue with the project, therefore the complainants are entitled to commitment charges as agreed between the parties vide agreement dated 18.06.2019. Thus, in view of the agreed terms and conditions duly agreed between the parties, the contention of the respondent stands rejected.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to immediately pay the not paid or short paid commitment charges.

11. In the present matter the complainants were provisionally allotted a shop on 15.04.2019 shop bearing no. Shop no. 30, Ground floor, Tower-B in the project namely The Plaza located in sector 106, Gurugram. The buyer's agreement was executed on 18.06.2019 and the complainants started paying the amount due against the allotted unit and paid a sum of ₹79,18,960/- for a total sale consideration of ₹79,30,750/-. As per clause 9 of schedule C of the agreement dated 18.06.2019 it was promised and assured to the complainants 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.

The relevant portion of clause 9 of Schedule C has been reproduced below for the ready reference:

Clause 9. of schedule C of BBA

*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.***

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.

12. Further as per section 11(4)(a) of the Act of 2016, the promoter is responsible for all obligations and responsibilities as per the provisions of the Act or the terms agreed as per agreement for sale. The relevant portion of section 11(4)(a) is reproduced below:

(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 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:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

13. In the present case, on 07.03.2020 at page no. 130 of the complaint, the respondent sent letter to complainants which is in continuation of the agreement dated 18.06.2019 stating that since they are working on

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finalizing leasing arrangements, therefore payment of commitment charges effective from 28.11.2019, will now start effective from 01.06.2020 and the complainant never objected to the same and accepted the part payment in terms of letter dated 07.03.2020.

14. 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 30.05.2023 to the tune of ₹19,09,980/- and the respondent has paid ₹15,07,304/-. Further the respondent agrees that the an amount of ₹6,14,896/- is pending on part of respondent to be paid on account of committed charges. But the respondent in its reply also mentioned that a letter dated 04.10.2021 signed by the complainant on 06.10.2021, the commitment charges were to be paid by the respondent w.e.f. 01.10.2021 till 04.07.2024 to the tune of ₹17,50,815/- and the respondent has paid ₹15,07,304/- and further an amount of Rs.1,05,892/- has been adjusted towards tenant improvement cost and brokerage. And the respondent agrees that an amount of ₹1,37,619/- is pending on part of the respondent towards commitment charges. It was also mentioned by the respondent in its reply that it was agreed between the parties that the letter dated 04.10.2021 will be in supersession of the agreement dated 18.06.2019 and all the previous communications. But the conveyance deed has been executed on 25.09.2020 between the parties which specifically mentions the relinquishment of all claims by the complainant-allottee after execution of conveyance deed. Therefore, the commitment charges are to be paid in terms letter dated 07.03.2020 agreed by the parties as the letter dated 07.03.2020 flows from the buyer's agreement dated 18.06.2019. Accordingly, the authority hereby directs the respondent to pay the committed charges to the complainant at Rs.81/- 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

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the respondent to the complainant on account of committed charges within 90 days from the date of this order.

G.II Direct the respondent to allot an independent covered car parking in place of the mechanical stack car parking already allotted or refund the cost paid for covered car parking i.e., Rs.3,54,000/- (including GST and stamp duty @ 6%) along with interest.

15. The complainants have raised concerns regarding the allocation of independent covered car parking in the place of mechanical stack car parking as they have paid Rs.3,00,000/- for the covered car parking. But as per schedule 22(d) of the agreement on page no. 110 of the complaint it is mentioned that Rs.3,00,000/- plus GST to be paid for development of car parking area. It is nowhere mentioned that the car parking is covered car parking.

16. The Authority, after carefully considering the submissions presented by the parties, finds that the complainants have failed to substantiate their claims with any documentary evidence or established agreements regarding the allocation of car parking slots. In the absence of such material proof, the Authority is unable to ascertain the legitimacy of the complainants' concerns about the claimed difficulties for the parking facilities. Further, the Authority observes that, in the absence of any binding contractual obligations, the respondent appears to have exercised its discretion in the management and distribution of the parking slots, which falls within the scope of the respondent's right. Hence, the Authority cannot accede with the above sought relief in absence of any agreed terms between the parties.

G.III Direct the respondent to pay a sum of Rs.2,00,000/- towards the cost of legal notice and litigation and compensation for causing mental and physical harassment to the complainants.

17. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in case titled as M/s

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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.

H. Directions of the Authority:

18. 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:

- i. The authority hereby directs the respondent to pay the commitment charges to the complainants at Rs.81/- 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 on account of said charges) as already agreed upon by the respondent in his reply.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

19. Complaint stand disposed of.

20. File be consigned to the registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.09.2024