

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM****Date of Decision:****12.09.2024**

NAME OF THE BUILDER		MAGIC EYE DEVELOPERS PRIVATE LIMITED	
PROJECT NAME		"PLAZA AT 106-I"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/3601/2023	Inderpal Bedi V/S Magic Eye Developers Private Limited	Shri Sushil Puri Advocate Shri Gaurav Rawat Advocate
2.	CR/3613/2023	Inderpal Singh Bedi V/S Magic Eye Developers Private Limited	Shri Sushil Puri Advocate Shri Gaurav Rawat Advocate

CORAM:

Shri Vijay Kumar Goyal

Member**ORDER**

1. This order shall dispose of both the complaints titled as above filed before this authority 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.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Plaza at 106-I" (Commercial Complex) being developed by the same respondent/promoter i.e., M/s Magic Eye Developers Private

Limited. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to pay commitment charges, seeking refund of the cost paid for covered car parking along with interest.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount and relief sought are given in a table below:

Complaint No., Case Title	CR/3601/2023 Inderpal Bedi V/S Magic Eye Developers Private Limited	CR/3613/2023 Inderpal Singh Bedi V/S Magic Eye Developers Private Limited
Reply status	05.12.2023	05.12.2023
Unit no.	12, Ground floor & Tower-C [As per page no. 67 of the complaint]	12, Ground floor & Tower-A [As per page no. 67 of the complaint]
Area admeasuring	805 sq. ft. (super area) [As per page no. 67 of the complaint]	870 sq. ft. (super area) [As per page no. 67 of the complaint]
Date of execution of agreement	20.05.2019 [As per page no. 88 of the complaint]	20.05.2019 [As per page no. 88 of the complaint]
Due date of handing over of possession	31.10.2023 (As per RERA registration)	31.12.2021 (As per RERA registration)
Offer of possession	27.12.2019 [As per page no. 106 of the complaint]	27.12.2019 [As per page no. 106 of the complaint]
Conveyance Deed	30.11.2021 [As per page no. 103 of the complaint]	27.11.2021 [As per page no. 105 of the complaint]
Total Consideration / Total Amount paid by the complainant(s)	TSC: Rs.55,39,948/- (As per page no. 100 of the complaint) AP: Rs.54,94,932/- (As per receipt information on page no. 79-82, 85 & 107 of the complaint)	TSC: Rs.59,38,620/- (As per page no. 101 of the complaint) AP: Rs.59,38,620/- (As per receipt information on page no. 79-82, 85 & 108 of the complaint)

4. The aforesaid complaints were filed by the complainants against the promoter on account of different payment plan in the allotment letter issued to the complainants than shown in the booking scheme and cancelling the unit way before the due date on account of non-payment, seeking payment of commitment charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case *CR/3601/2023, case titled as Inderpal Bedi V/S Magic Eye Developers Private Limited* are being taken into consideration for determining the rights of the allottee(s) qua payment of commitment charges along with cost of legal notice, litigation expenses and compensation.

A. Unit and project related details

7. 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.	GF-12C, Ground Floor & Tower-C (As per page no. 67 of the complaint)
8.	Unit area admeasuring	805 sq. ft. (Super area) (As per page no. 67 of the complaint)
9.	Welcome letter	15.03.2019 (As per page no. 83 of the complaint)
10.	Date of execution of agreement	20.05.2019 (As per page no. 88 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 of nature which make it impossible for the contract to be implemented. (As per page no. 92 of the complaint)</i>
12.	Commitment charges	Clause 9.of schedule C of BBA <i>Commitment Charges: Irrespective of anything contrary contained in the body of agreement, Promoter shall (through</i>

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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 realized from sub-leasing of unit is less than the aforesaid amount, promoter shall pay the shortfall to allottee as

		<p>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.</p> <p>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. 103 of the complaint)</p>
13.	Due date of possession	<p>30.06.2022</p> <p>(As per RERA registration plus 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for</p>

		the projects having completion date on or after 25.03.2020)
14.	Total sale consideration	Rs.55,39,948/- (As per page no. 105 of the complaint)
15.	Amount paid by the complainant	Rs.54,94,932/- (As per receipt information on page no. 79-82, 85 & 107 of the complaint)
16.	Occupation Certificate	28.11.2019 (As per page no. 106 of the complaint)
17.	Offer of possession	27.12.2019 (As per page no. 106 of the complaint)
18.	Conveyance Deed	28.02.2020 (As per page no. 111 of the complaint)
19.	Relinquishment deed of the co-allottee	18.08.2021 (As per page no. 134 of the complaint)
20.	Date of transfer deed (Transfer of unit by the original allottee to his son i.e., the complainant Mr. Inderpal Singh Bedi)	07.09.2021 (As per page no. 141 of the complaint)
21.	Legal notice seeking recovery of arrears of commitment charges	10.07.2023 (As per page no. 10 of the complaint)

B. Facts of the complaint:

8. The complainant has 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 shop owners Mr. Harnarinder Singh Bedi and Mrs. Adarsh Bedi both residents of H. No. 387, Sector - 23, Gurugram - 122 017, Haryana purchased a non-lockable retail shop no. - 12, measuring 805 sq. ft. Super Area (Carpet Area of 356 sq. ft.) at ground floor of Tower C 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 14.03.2019. A cheque dated 07.02.2019 for Rs.2,00,000/- was received from shop owners as booking amount and payment receipt was issued by promoter on 15.03.2019.
- 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 shop owners from time to time.
- VI. That a payment of Rs.15,10,861/- was made by shop owners vide cheque dated 13.05.2019 and the same was acknowledged by promoter through his official receipt dated 15.05.2019.
- VII. 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 shop owners and promoter which was signed and registered on 24.05.2019, 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.

VIII. That the respondent/promoter through a letter dated 27.12.2019 sent to shop owners a 'Demand cum Offer of Possession' claiming to have received 'Occupation Certificate' from the concerned government authorities. The letter asked the shop owners to pay

(after deducting the already paid amount of Rs.47,10,862/-) the entire outstanding payment of Rs.8,29,087/- latest by 25.01.2020.

- IX. That the promoter had wrongly charged GST on External Development Charges (Rs.41,152/-) and Internal Development Charges (Rs.3,864/-), both being government levies and therefore not subject to levy of GST. The shop owners pointed it out to promoter and after acceptance of the error by promoter company, the complainants paid the correct outstanding of Rs.7,84,071/- well before the due date i.e., 06.01.2020 to the promoter, duly acknowledged vide their various money receipts dated 14.01.2020.
- X. That the promoter sends demand Letter to the shop owners 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 shop owners 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.
- XI. 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.
- XII. 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

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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.

- XIII. 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.
- XIV. 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.

- XV. 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 30.10.2022.
- XVI. That in the interim after receiving entire payment for the said shop, the promoter invited shop owners on 25.07.2020 to takeover physical inspection and possession of the shop but thereafter were told that the physical inspection, possession and handover of keys is not possible as the shop in question is non-lockable and more importantly, the promoter 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.
- XVII. That the co-owner of shop Mrs. Adarsh Bedi passed away on 21.02.2020, and consequently first a relinquishment deed dated 18.08.2021 or her share of 60% ownership in favour of primary shop owner Lt. Gen Mr. Harnarinder Singh Bedi and thereafter a transfer deed dated 07.09.2021 was also executed in favour of Mr. Inderpal Singh Bedi making him sole/new owner of the unit.

- XVIII. 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.
- XIX. That on 24.07.2023, the new shop owner Mr. Inderpal Singh Bedi sent an email to promoter asking him to give physical possession after erection of walls by converting the non-lockable nature of shop into lockable and handover keys thereof 36 months period since 28.11.2019 have been completed and the promoter has already stopped paying any further commitment charges after October, 2022. The handover of physical possession of shop will at least be able to use the property for some useful purpose.

C. Relief sought by the complainant:

9. The complainant has 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 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:

10. The respondent contested the complaint on the following grounds:
- a. That the complainants took the allotment of unit no. 12 on ground floor, tower C of project named 'The Plaza at 106-I' Sector-106, Gurugram vide agreement dated 20.05.2019.

- b. That construction of aforesaid project got completed on 28.11.2019 and respondent offered possession of the unit to complainants on 30.11.2019. The complainants got the conveyance deed of the unit executed and registered on 28.02.2020.
- c. That the respondent has already paid a sum of Rs.9,45,487/- to the complainant towards commitment charges. It is submitted that the complainant is not entitled to commitment charges for any period affected by covid-19.
- d. 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 20.05.2019, 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 <i>(*as per annexure No. 14 placed on record by complainant at page 121 of the compliant).</i>	23,47,380
B.	Amount already Paid (as per ledger statement annexed herewith as Annexure R-2)	9,45,487
C.	Balance commitment charges [A- B] shall be payable after leasing of aforesaid unit	14,01,893*

- e. That the respondent has already paid a sum of Rs.9,45,487/- 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.
- f. That 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 the developer buyer's agreement subject to leasing of the unit.

- g. That the type of unit allotted to the complainant is non-lockable unit for which the conveyance deed has already been executed on 28.02.2020 and the same cannot be converted into lockable unit.
- h. That after execution of conveyance deed, disputes relating to commitment charges are beyond the jurisdiction of the Hon'ble Authority.
- i. That the contents of paras of brief facts save the matter of record are wrong, false and hence denied. It is denied that the complainants are entitled for commitment charges, or any interest accrued thereon on account of any alleged deficiency. Rather, conveyance deed stands executed and respondent has already paid a sum of Rs.9,45,487/- 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.
- j. 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.

11. 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.

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E. Jurisdiction of the authority:

12. 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 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

.....

(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.

13. 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 complainant at a later stage.

F. Findings on the relief sought by the complainant:

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

14. In the present matter Mr. Harnarinder Bedi i.e. original allottee (father of the complainant) and Mrs. Adarsh Bedi(wife of the original allottee) were provisionally allotted a shop on 15.03.2019 shop bearing no. Shop no. 12, Ground floor, Tower-C in the project namely The Plaza located in sector 106, Gurugram. The buyer's agreement was executed on 20.05.2019 and the original allottee and co-allottee started paying the amount due against the allotted unit and paid a sum of ₹54,87,270/- for a total sale consideration of ₹55,39,948/-. As per clause 9 of schedule C of the agreement dated 20.05.2019 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. 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.

15. 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.

16. In the present case, on 07.03.2020 at page 121 of the complaint, the respondent sent letter to the original allottee stating that since they are working on finalizing leasing arrangements, therefore payment of commitment charges effective from 27.12.2019, will now start effective from 01.06.2020.

17. 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 ₹23,47,380/- and the respondent has paid ₹9,45,487/-. Further the respondent agrees that the an amount of ₹14,01,893/- is pending on part of respondent to be paid on account of committed charges. Though the respondent has raised an objection to the payment of commitment charges as per letter dated 07.03.2020 issued by the respondent. But the original allottee has accepted part

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commitment charges of ₹9,45,487/- in accordance with the letter dated 07.03.2020. Therefore, the original allottee has accepted the letter dated 07.03.2020 issued by the respondent. The conveyance deed for the subject unit was executed on 28.02.2020 which specifically mentions the relinquishment of all claims by the original allottee after execution of conveyance deed. But the possession of the unit is still with the respondent therefore, the liability of the respondent to the original allottee is continuing as per BBA and letter dated 07.03.2020.

18. The complainant has mentioned in the facts of the complaint that the subject unit was initially allotted to Mr. Harnarinder Bedi i.e., original allottee (father of the complainant) and Mrs. Adarsh Bedi i.e., co-allottee. But the co-allottee died on 21.12.2020 and by way of relinquishment deed dated 18.08.2021 relinquished all her rights to surviving members of her family i.e., Mr. Harnarinder Bedi i.e., original allottee, Mr. Inderpal Singh Bedi i.e., the complainant and two daughters of the co-allottee. But the original allottee transferred the subject unit to the complainant by transfer deed of blood relation with all his rights, titles, interest and entitlement in the subject unit. As per Indian Contract Act, if a transfer of property is made without monetary consideration but duly registered and is in the writing is considered as transfer out of natural love and affection and the said property more particularly with all the rights, interest, claim, estate and demand whatsoever of the transferor into and upon the said property or any part thereof to hold the same unto and to the use of the transferee for ever. In the present complaint also, the transfer deed was made by the original allottee to his son, i.e., the complainant out of love and affection, therefore, the complainant is entitled to commitment charges as promised by the respondent to the original allottee.

19. The counsel for the respondent vide proceedings of the day dated 12.09.2024 requested to allow maintenance charges in terms of clause no. 11 of the agreement but the counsel for the complainant stated that the possession of the unit is still with the respondent and requests for no maintenance charges to be levied. As mentioned in the facts of the complaint and as per letter dated 04.10.2021 the unit of the complainant was leased out to a company namely Instakart, thus in view of the same the maintenance charges are also to be borne by the lessee i.e., Instakart and not by the complainant-allottee.

20. Accordingly, the authority hereby directs the respondent to pay the commitment 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 the respondent to the complainant on account of commitment charges within 90 days from the date of this order.

F.II 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.

21. 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.

G. Directions of the Authority:

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22. 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 within 90 days from the date of this order.
- 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.

23. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

24. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.

25. Files be consigned to the registry.

v.l
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.09.2024