

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA  
REAL ESTATE REGULATORY AUTHORITY, GURUGRAM**

**Complaint No.3687-2023  
Date of Decision: 30.04.2025**

**J.M. Chhabra  
1184/1, 1<sup>st</sup> Floor, Arjun Nagar Kotla Mubarakpur,  
New Delhi-110003.**

**Complainant**

**Versus**

**M/s. Magic Eye Developers Private Limited  
GF-9, Plaza M-6, Jasola District Centre Jasola,  
New Delhi-110025.**

**Respondent**

**APPEARANCE**

**For Complainant:  
For Respondent**

**Complainant in person  
Mr. Gaurav Rawat, Advocate**

**ORDER**

1. This is a complaint, filed by JM Chhabra (allottee) under section 71 of The Real Estate (Regulation and Development), Act 2016 (in brief the Act), against M/s. Magic Eye Developers Pvt Ltd (promoter).
2. This complaint has a chequered history, which is explained by the complainant himself as under: -

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That on 08.03.2019, he filed a complaint before The Haryana Real Estate Regulatory Authority, Gurugram for refund of the total amount, paid to the respondent along with prescribed rate of interest. His complaint was later on transferred to the Ld. Adjudicating Officer for further action and disposal of it. As per the direction of Ld. Adjudicating Officer, amended complaint was filed in the Form CAO on 04.09.2019. In the amended complaint, in addition to the Refund along with interest, he (complainant) sought compensation as prescribed in Section 71 of the Real Estate (Regulation & Development) Act 2016. After final arguments, the case was fixed for 17.10.2019 for pronouncement of the judgment. But the judgment could not be pronounced as Haryana Real Estate Regularity Authority declared holiday. The case was again transferred to Learned Authority, Gurugram due to the amendment of Rule 28 & 29 issued by the DTCP Chandigarh. Later on, stay on this amendment was granted by the Hon'ble Punjab & Haryana High Court, the case was again transferred to the learned Adjudicating Officer. Finally, the case was decided on 21.08.2021 with the following Orders.

“Complaint in hands is thus allowed and respondent is directed to refund entire amount received from complainant within 90 days from today, with interest @ 9.3% p.a. A cost of Rs. 1.00 lac is also imposed upon respondent to be paid to the



complainant. But unfortunately, no decision was taken on the compensation.

3. The respondent later on filed an appeal with the Hon'ble Haryana Real Estate Appellant Tribunal, Chandigarh and stated that the Learned Adjudicating Officer had no jurisdiction to entertain and adjudicate upon the complaint filed by respondent-allottee for refund of the amount paid by him to the appellant-promoter in view of the judgment of Hon'ble Apex Court in case *New Tech Promoters & Developers Pvt Ltd vs State of UP & others ETC-2022(1) RCR (Civil) 357*.

4. Hon'ble Appellant<sup>te</sup> Tribunal set aside aforesaid order dated 21.08.2021 and remitted the complaint to the Haryana Real Estate Regularity Authority, Gurugram for fresh trial/decision. The Authority, Gurugram decided the complaint on 11.05.2023 and gave following directions: -

“The respondent is directed to refund the amount received by him i.e. Rs. 52,57,406/- with interest at the rate of 10.70% as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the date of actual refund of the amount within the time lines provided in rule 16 of Haryana Rules



2017 ibid" and also directed the complainant to file an application before the Ld. Adjudicating Officer."

5. Present application/complaint has been filed for grant of compensation as prescribed under section 71 of The Real Estate (Regulation & Development) Act 2016.

6. According to complainant, he is a retired Govt. servant. He booked a shop for earning his livelihood. The Real Estate Agent, who approached him for booking of the shop, told him that the possession of the shop will be handed over to him sometime in the middle of 2015 but his hopes were shattered on the execution of the BBA on 26.03.2013 and found that the possession of the shop would be handed over after 4 years from the date of execution of the BBA. His hopes were further shattered when the possession of the shop was not handed over even after completion of 4 years i.e. on 25.03.2017. He (complainant) ~~had~~ visited the site sometime<sup>L</sup> in May 2017 and was perplexed and astonished to find that what to say of completion of the construction, only a few pillars were there covered with brick wall upto 7 feet. No labour was seen and it showed that no construction work has taken place for the last 2 years. The promoter had given an undertaking that the project will be completed by 31.12.2021. Clause 10.3 of the BBA mentioned that if the promoter does not hand over

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the possession of the Unit within 3 years plus 2 extensions, allottee (complainant) shall be entitled to give notice to the Developer within 90 days from the expiry of said extended period for terminating this agreement and seek refund of the amount paid to the promoter against the shop. Accordingly, a notice was issued to the promoter on 20.06.2017 through speed post. The promoter neither terminated the BBA nor refunded him the amount. Due to this action on the part of promoter/builder, he (complainant) suffered severe illness ranging from "High Blood Pressure, Sugar & Arthritis etc."

7. Contending all this, the complainant sought compensation for the loss suffered by him for two years and nine months at the instance of the respondent/promoter for not handing over the possession of the shop up-to 25.3.2017 i.e. the date of completion of 4 years from the date of execution of the BBA, calculated as under: -

Rs. 30,000/- per month for earning his livelihood		
Rs.30,000/- x 32 months	=	Rs. 9,60,000/-
For mental harassment etc.	=	Rs. 5,40,000/-
	=	<u>Rs.15,00,000/-</u>

8. The complainant has prayed for grant of compensation of Rs. 15,00,000/- to him, with applicable interest on the amount of compensation.



9. The respondent contested the complaint by filing a written reply. The facts that complainant booked a shop in the project 'The Plaza at 106" in sector-106, Gurugram on 30.10.2012 and shop No.21/GF was allotted to the complainant, the Builder Buyer Agreement was executed on 26.03.2013. As per clause 9.1 of the BBA, the possession of the shop was to be handed over within 3 years and 2 extensions. The date of handing over the possession of the shop was 25.03.2017 but the promoter could not fulfil his promise resulting in seeking refund and interest at the prescribed rate of interest. The promoter obtained the OC on 30.11.2019 and there was an overall delay of 2 years 9 months upto the date of receipt of the OC and offer of possession, are not disputed by the respondent. The respondent sought dismissal of complaint on following grounds: -

a) Appeal bearing No. 412 of 2022 was filed by the respondent against the order dated 20.08.2021 passed by Ld. Adjudicating Officer, HRERA, Gurugram, in complaint No. 779 of 2019 titled "J.M. Chhabra vs Magic Eye Developers Pvt Ltd." whereby complaint filed by complainant herein for refund of amount was allowed and the respondent herein is/was directed to refund the entire amount (i.e. Rs.51,74,218/-) alongwith interest @ 9.3% p.a. and cost of Rs. 1,00,000/-.

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b) The aforesaid Appeal No. 412 of 2022 was disposed of vide order dated 03.03.2023, whereby the order dated 20.08.2021 was set aside and complaint was remitted to the Learned Haryana Real Estate Regulatory Authority, Gurugram for fresh trial/decision in accordance with law. The Hon'ble Appellant Tribunal further directed the parties to appear before learned Authority on 21.03.2023. The order further stated that:-

*"The amount deposited by the appellant-promoter i.e. Rs. 77,61,968/- with this Tribunal to comply with the proviso to Section 43 (5) of the Real Estate (Regulation & Development) Act, 2016, along with interest accrued thereon, be sent to the Learned Authority for disbursement to the appellant-promoter subject to tax liability, if any, as per law and rules".*

c) That as per directions of Hon'ble <sup>Appellate</sup> Appellant Tribunal, the respondent herein appeared before Ld. Authority. The Ld. Authority under the same set of circumstances, without requiring filing of the fresh complaint by the complainant in Form CRA and without considering the written arguments and judgments relied upon by the respondent passed the impugned order dated 09.05.2023 uploaded on the website of the Ld. Authority on 01.06.2023 vide the impugned order,

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“Respondent herein is directed to refund the amount received by respondent i.e. Rs. 52,57,406/- with interest at the rate of 10.70%”.

d) The respondent herein has already filed an appeal No. 418 of 2023 before Hon'ble Haryana Real Estate Appellate Tribunal, challenging the impugned order dated 09.05.2023 passed by Ld. Haryana Real Estate Regulatory Authority, Gurugram in complaint No. 779 of 2019 titled “J.M. Chhabra vs Magic Eye Developers Pvt Ltd and said appeal No. 418 of 2023 is pending before Hon'ble <sup>Appellate</sup> ~~Appellant~~ Tribunal for final disposal.

e) It is further averred that the complainant paid a sum of Rs. 51,74,214/- (inclusive of taxes) till date and in compliance of section 43 (5) of the Real Estate (Regulation and Development) Act, 2016, the respondent herein has deposited a sum of Rs. 77,61,968/- (supra) and therefore, amount with interest which he may receive subject to disposal of Appeal No. 418 of 2023 is much more and sufficient amount in all respect including his alleged claims/harassment/losses and therefore, instant complaint is not maintainable for any alleged compensation.

10. The respondent requested for dismissal of complaint.

11. I have heard complainant in person and Mr. Gaurav

Rawat, Advocate for the respondent. My findings are as under: -



12. It is not in dispute between the parties that the complainant was allotted a shop i.e. Shop No. 21/GF in project being developed by the respondent i.e. The Plaza at 106, Sector-106, Gurugram. A Builder Buyer Agreement (BBA) was executed on 26.03.2013. As per clause 9.1 of the BBA, respondent was obliged to hand over possession of said shop within 3 years from the date of execution of the BBA, with extension of grace period of 12 months, which came to be 25.03.2017. The promoter failed to hand over possession of subject unit till this agreed date. The possession was handed over to allottee-complainant after delay of two years and 9 months from the due date of possession.

13. The only plea taken by respondent is that a complaint filed by present complainant seeking refund of amount, has already been allowed by the Authority vide order dated 09.05.2023 and hence, same (complainant) is not entitled to any compensation.

14. As per Section 18 (1) of Act of 2016, if promoter fails to complete or unable to give possession of an apartment, plot or building, -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein-----, he shall be liable on demand to the allottees, in



case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest at such rate as may be prescribed in this behalf **including compensation, in the manner as provided under this Act.**

15. A perusal of this provision makes it clear that if promoter fails to complete the apartment, plot or building in accordance with the terms of the agreement and allottee demands the refund of the amount, the promoter/builder is liable to refund of amount received by the same along with interest as well as compensation. Admittedly, there occurred delay of about 2 years and 9 months in offering possession of subject unit. In view of said provision, the promoter is liable to refund the amount received by the same along with interest and again to pay the compensation as prescribed under <sup>-1/2</sup> this Act. <sup>2016</sup>.

16. As mentioned above, relief of refund of amount along with interest has already been granted to the complainant.

17. So far as the amount of compensation which complainant is entitled in this case is concerned, as per Section 72 of

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the Act of 2016 following factors are to be taken into account by the Adjudicating Officer in determining amount of compensation: -

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

18. Even as per respondent, complainant had paid a sum of Rs.51,74,214/- out of total consideration of Rs.56,71,743/- (inclusive of taxes). The promoter (respondent) used money paid by allottee-complainant but failed to complete the project. In this way, respondent got unfair advantage, which consequently caused loss to the allottee-complainant.

19. As stated earlier, complainant had prayed for compensation at rate Rs.30,000/- per month for loss of earning/livelihood for 32 months total amounting Rs.9,60,000/-. According to the complainant, if he had received the possession in time, the shop in question would have earned rent of Rs.30,000/- per month.

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20. This plea is disputed by learned counsel for respondent. According to him, the prevailing rate of rent in that area is not more than Rs.10,000/- P.M. As described earlier, shop in question is situated in Sector-106, Gurugram and measuring 518 sq. ft. Undoubtedly, Sector-106, Gurugram is still in the process of development and is not fully developed till now. The complainant did not adduce any evidence to verify that said shop would have earned Rs.30,000/- per month, if rented out. Keeping in view size of shop and also the area where it is situated i.e. Sector-106 being developing area, I think Rs.30,000/- per month will be excessive amount. Considering factors mentioned above, I award compensation to the complainant for loss of livelihood/rent at rate Rs.15,000/- per month for 2 years and 9 months, to be paid by the respondent.

21. The complainant has prayed for compensation of Rs.5,40,000/- for mental harassment and agony. The complainant is stated to be a senior citizen aged more than 79 years, apparently when he did not get possession of subject unit i.e. shop in agreed time, despite making payment of major part of sale consideration, it caused mental harassment and agony to him. Same is awarded a sum of Rs.2,00,000/- as compensation for mental harassment and agony.


*Ans by Ad*



22. The respondent is directed to pay said amounts of compensation mentioned above along with interest at rate of Rs.10.50% per annum, from the date of this order till the date of realization of amount.

23. File be consigned to record room.

Announced in open Court today i.e. 30.04.25.

  
(Rajender Kumar)  
Adjudicating Officer,  
Haryana Real Estate  
Regulatory Authority,  
Gurugram.30.04.2025