

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

Date of Decision: 08.05.2025

NAME OF THE BUILDER		MAGIC EYE DEVELOPERS PRIVATE LIMITED	
PROJECT NAME		"PLAZA AT 106-I"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/3592/2023	Ashok Taneja V/S Magic Eye Developers Private Limited and Mr.Surendra Nath Panda(AR of R1)	Ms. Vandeeta Gupta Advocate Shri Gaurav Rawat Advocate
2.	CR/3602/2023	Sonal Gulati V/S Magic Eye Developers Private Limited and Mr.Surendra Nath Panda(AR of R1)	Ms. Vandeeta Gupta 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/3592/2023 Ashok Taneja V/S Magic Eye Developers Private Limited and Mr. Surendra Nath Panda (AR of R1)	CR/3602/2023 Sonal Gulati V/S Magic Eye Developers Private Limited and Mr. Surendra Nath Panda (AR of R1)
Reply status	14.12.2023	14.12.2023
Unit no.	7, Ground floor & Tower-B [As per page no. 47 of the complaint]	9, Ground floor & Tower-B [As per page no. 46 of the complaint]
Area admeasuring	728 sq. ft. (super area) and 328 sq. ft. (carpet area) [As per page no. 47 of the complaint]	728 sq. ft. (super area) and 339 sq. ft. (carpet area) [As per page no. 46 of the complaint]
Date of execution of agreement	02.09.2019 [As per page no. 33 of the complaint]	02.09.2019 [As per page no. 33 of the complaint]
Due date of handing over 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 after 25.03.2020)	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 after 25.03.2020)
Offer of possession	30.11.2019 [As per page no. 3 of the reply]	30.11.2019 [As per page no. 3 of the reply]
Conveyance Deed	01.03.2021 [As per page no. 66 of the]	01.03.2021 [As per page no. 66 of the]

	complaint]	complaint] (Inadvertently mentioned as 31.12.2020 in POD dated 20.03.2025)
Total Consideration / Total Amount paid by the complainant	TSC: Rs.39,70,512/- (As per page no. 47 of the complaint) AP: Rs.32,42,982/- (As per receipt information on page no. 52-60 of the complaint)	TSC: Rs.39,70,512/- (As per page no. 46 of the complaint) AP: Rs.40,11,222/- (As per applicant ledger dated 06.12.2023 on page no. 15 of the reply)

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/allottee are also similar. Out of the above-mentioned case, the particulars of lead case **CR/3592/2023, case titled as Ashok Taneja V/S Magic Eye Developers Private Limited and Mr. Surendra Nath Panda(AR of R1)** are being taken into consideration for determining the rights of the allottee(s) qua payment of commitment charges along with interest, cost of legal notice, litigation expenses and compensation.

A. Unit and project related details

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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 of the project	"Plaza at Sec-106" Sector-106, Gurugram
2.	Project area	3.725 acres
3.	Nature of project	Commercial Project
4.	RERA registered/not registered	Registered vide no. 72 of 2017 dated 21.08.2017 valid up to 31.12.2021
5.	DTCP License no.	65 of 2012 dated 21.06.2012 valid up to 21.06.2022
	Name of licensee	Magic Eye Developers Private Limited
6.	Unit no.	Unit No. 7, Ground Floor, Tower- B (As per page no. 47 of the complaint)
7.	Unit measuring	728 sq. ft. (super area) (As per page no. 47 of the complaint)
8.	Date of execution of Agreement	02.09.2019 (As per page no. 33 of the complaint)
9.	Possession clause	<p>7. Possession of the unit</p> <p>7.1 Schedule for possession of the unit-</p> <p>The promoter 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 Sr. 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 the force majeure conditions then the allottee agrees that the promoter shall be entitled to the extension of time for delivery of the possession of the unit, provided that such force majeure conditions are not of a nature which make it possible for the contract to be implemented.....</p> <p>(As per page no. 38 of the complaint)</p>
10.	Commitment Charges	Clause 9. of schedule C of BBA



HARERA
GURUGRAM

Complaint No. 3592 of 2023
& another

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

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Three Only) per month per square feet of super area of Unit (inclusive of all Taxes). In case, during the committed period, rent realized from sub-leasing of unit is less than the aforesaid amount, promoter shall pay the shortfall to allottee as commitment charge. After the end of committed period promoter shall not be liable to pay any money to allottee and allottee shall be entitled to actual proportionate monthly rent paid by tenant

If Unit is Lockable Studio Unit: Rs. 30/- (Rupees Thirty Only) per month per square feet of super area (inclusive of all Taxes) + 50% of rent/user charges paid by Lessees/Licensees for the unit. Balance 50% of actual rent/user charges paid by Lessee/Licensee during committed period shall belong to Promoter/Managing Entity. After the end of committed period, allottee shall be entitled to its complete rent paid by Lessee/Licensee. Subject to Lease/License already granted by promoter/promoter's nominee, allottee shall have to right to himself use/grant lease/license of Unit to appropriate person.

All payments shall be made on monthly basis after deduction of TDS. Commitment Charges shall be payable only if allottee has made payment of his all dues to Promoter within 30 days from the date of receipt of offer of possession. Promoter shall be entitled to adjust its dues, if any, from the commitment charges.

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 (As per page no. 50 of the complaint)
11.	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 after 25.03.2020)
12.	Total sale consideration	Rs.39,70,512/- (As per page no. 47 of the complaint)
13.	Total amount paid by the complainant (To be confirmed)	Rs.40,11,222/- (As alleged by the complainant on page no. 12 of the complaint) Rs.32,42,982/- (As per receipt information on page no. 52-60 of the complaint)
14.	Occupation certificate	28.11.2019 (As per DTCP website)
15.	Offer of possession	30.11.2019 (As per page no. 3 of the reply)
16.	Conveyance deed	01.03.2021 (As per page no. 66 of the complaint)
17.	Lease deed with Instakart for 3 years i.e., 05.07.2021 to 04.07.2024	04.10.2021 (As per page no. 79 of the complaint)
18.	Legal Notice for payment of remaining commitment charges and assured minimal rental charges and interest	14.07.2023 (As per page no. 80 of the complaint)

B. Facts of the complaint:

8. The complainant has made the following submissions:

1. That the complainant Mr. Ashok Taneja, is a peaceful and law-abiding citizen residing at E-70, Greenwood City, Secor-45, Gurgaon, Haryana-122003.

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- II. 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.
- III. 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.
- IV. That the complainant came to know about the project through sales team of the respondent company wherein they had approached the complainant on various occasions to provide information about the project and the benefits the complainant can avail by purchasing a commercial unit in the project. The representatives of the respondent company further informed the complainant would be receiving assured commitment charges every month after getting the possession of the unit.
- V. That the complainant was convinced on basis of representations and warranties made by the respondent company and duly booked a unit in the project by paying Rs.2.00.000/-. Vide receipt dated 05.04.2019, the complainant has confirmed the same and became the bonafide owner of the commercial unit no. 07, having a super area of 728 sq. ft. (Carpet Area of 328 sq. ft.) situated on ground floor of Tower B2 in the project along with one independent car parking space.

- VI. That vide agreement dated 02.09.2019, the complainant procured the allotment of commercial unit from the respondent company.
- VII. That the complainant has disbursed all payments timely, to the complete satisfaction of the respondent company and in accordance with the terms of the agreement. The complainant has fulfilled all its obligations and responsibilities with respect to the agreement. The complainant made payments in tranches in terms of the agreement and thus the complainant had paid the total consideration of Rs.40,11,222/- inclusive of all taxes, PLC, Club Membership Fee, External Development Charges, Internal Development Charges and other charges, if any (IFMS).
- VIII. That as per letter dated 03.02.2020, the respondent company called the complainant for registration of conveyance deed and payment of stamp duty and registration charges which amounted to be Rs.1,79,900/- and Rs.20,006/- respectively. It is further submitted that in the invitation the respondent company also demanded the complainant to pay in cash for Advocates fee and miscellaneous expenses amounting to Rs.12,000/- at the time of registration of the said unit. It was never agreed between the respondent and the complainant that the Advocates fees and miscellaneous expenses will be borne by the complainant.
- IX. That vide revised letter dated 27.01.2021, the respondent company again called the complainant to pay an additional amount for registration of conveyance deed due to increase in stamp duty charges by 2% vide notification dated 28.12.2020 by the Municipal Corporation of Gurugram, the additional stamp duty borne by the complainant which amounted to be Rs.71,900/-. The excessive stamp duty charges paid by the complainant was a result of delay in

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registering the conveyance deed by the respondent company and had the respondent company diligently acted upon its first letter of intimation then the complainant would have not paid the excess amount of Rs.71,900/-. It is evident from both the letters of intimation that there is a clear delay of almost one year by the respondent company to register the conveyance deed.

- X. That thereafter upon receiving all the payments successfully the respondent company executed the conveyance deed through its authorized representative, being respondent no. 2, in favor of the complainant, which was signed by both parties on 01.03.2021 and was duly registered with the Sub-Registrar Kadipur, Gurugram vide registration no. 5755.
- XI. That the respondent company till date has not provided the independent/designated car parking space to the complainant. The respondent company has violated the terms and conditions of the conveyance deed and have modified the dedicated car parking space of each allottee to a common multi-level car parking area without any consent or agreement.
- XII. That the clause 9 of Schedule C of agreement states that the promoter is obligated to pay an amount Rs.81/- per sq. ft. per month of super area of unit which will be represented as the commitment charges which shall be paid to the owner of the unit. The promoter commits that the owner of the unit in the said project shall receive assured minimum rental charges every month from sub-leasing/renting of unit for a period of 36 months with effect from the date of offer of possession.
- XIII. That the respondent company are obligated to pay an amount Rs.81/- per month per sq. ft. of super area of the unit i.e., 728 sq. ft.,

which is commitment charges, the same has been calculated to be an amount of Rs.58,968/- per month as per the respondent company's sales team representation and the terms of the agreement dated 02.09.2019. However, the complainant was in utter shock that the respondent company disbursed only an amount of Rs.29,484/- in the month of July 2020, for the commitment charges which were due to the complainant against the amount of Rs.58,968/- per month as per the terms and conditions of the agreement.

- XIV. That the complainant was never conveyed nor was provided any justification in relation to the deficiency in the amount which was paid to him and neither any consent was taken from him in relation to the same. That without holding any discussion, the respondent company has demanded the deficient amount on the complainant which has varied from time to time and is in violation of the settled terms and conditions as per the agreement. That, further going forward the complainant has only received part payment of the entire commitment charges payable between the period of July 2020 to July 2023. The complainant was entitled to be paid an amount of Rs.21,81,816/-, however, the respondent company have only paid Rs.14,11,129/- to the complainant and therefore there has been a deficiency of Rs.7,70,687/- which has been withheld by the respondent.
- XV. That the respondent company sent a letter dated 13.08.2021 to the complainant and informing him about the execution of lease deed dated 05.07.2021 in favor of M/s Instakart Service Private Limited for a carpet area of 4200 sq. ft. with an amount of Rs.60/- per sq. ft. of the carpet area. The complainant's unit of 728 sq. ft. of Super

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Area was also leased out in the above lease. The afore-mentioned lease deed was executed without making the complainant, the confirming party as the said unit in contention is owned by the complainant. Prior to executing such lease deed, the complainant was neither informed nor permitted to consent to the same. The complainant was also not paid the entire amount of Rs. 60/- per month per sq. ft. of super area of unit as per the terms of the said lease deed by the respondent company which is an unlawful act on the part of the respondent company. The respondent company have acted on their whims and fancies without ever taking the consent of the complainant or even discussing the decisions which was solely taken by the respondent company.

- XVI. That the respondent company sent a reworked letter dated 04.10.2021 to the complainant with reference to the modified payment of the commitment charges as the respondent company were earning good from the project and have mala fide intention to gain unlawfully from the complainant's property. The respondent company again promised to pay an amount of Rs. 67.50/- per month per sq. ft. for the super area of the unit to the complainant in the letter for which the respondent company again failed to do so and being in continuous default with their promises. The respondent company through the letter dated 04.10.2021, put an additional cost of an amount Rs.1,88,310/- for the improvement and brokerage for the leased unit which was imposed on the complainant without any prior approval and acknowledgment. The improvement and brokerage cost were forced on the complainant and informed him that the same shall be adjusted proportionately from the commitment charges. The respondent company has

performed an illegal act as per law without considering or conducting any discussions with the complainant and against the terms of the executed agreement and conveyance deed.

/*to the utter shock of the complainant, it was informed by other investors of the project, that the respondent company has been performing its duty of commitment charges. However, for the reason best known to it, the respondent company is merely evading its liability of providing the entire commitment charges to the complainant.

- XVII. That the complainant on a few occasions visited the office of the respondent company to discuss about the shortfall in the commitment charges but however, no representative of the respondent company was available to entertain the issue.
- XVIII. That since the respondent company failed to address the issue in person during the visits made by the complainant, therefore the complainant was forced to seek outstanding amount of the commitment charges vide legal notice dated 14.07.2023.
- XIX. That the respondent company has blatantly and deliberately defaulted on the terms and conditions of the agreement and conveyance deed, whereby the respondent company has failed to provide Rs.81/- per month per sq. ft. of super area of unit as a part of guaranteed minimum return on the investment made by the complainant.
- XX. That the respondent company has deceived the complainant with its misleading representations of providing the assured minimum rental charges every month against the booking of the unit in the said project. The respondent company had malicious intent from



the beginning and never intended to pay the complete commitment charges to the complainant and there is proven ignorance and wilful misconduct on its part.

- XXI. That the respondent company failed to adhere to the execution and performance of the terms of the agreement and the conveyance deed as entrusted in it and breached the terms of the agreement and the conveyance deed which has caused monetary loss to the complainant and therefore the respondent company is under an obligation to pay for the same.
- XXII. The present complaint is being filed seeking payment of Rs.7,70,687/- towards unpaid commitment charges and payment of Rs.2,50,550/- towards interest charged on deficiency in payments of commitment charges.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):

- i. Direct the respondent company to pay a sum of Rs.7,70,687/- on account of deficiency in payments towards the complete commitment charges from July 2020 to July 2023, under the obligation as per the agreement dated 02.09.2019.
- ii. Direct the respondent company to pay a sum of Rs.2,50,550/- towards the interest on deficiency in payments which has suffered monetary loss from July 2020 to July 2023.
- iii. Direct the respondent company to pay the assured minimum rental charges for an amount Rs.81/- per month per sq. ft. of super area of the unit i.e., 728 sq. ft., which has been calculated to be an amount of Rs.58,968/- per month, when the commitment charges are due in future.

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- iv. Direct the respondent company to designate the independent car parking space for the complainant.
- v. Direct the respondent to pay litigation cost.

D. Reply by the respondents:

10. The respondents have contested the complaint on the following grounds:

- a. That the complainants took the allotment of unit no. 7 on ground floor, tower B of project named 'The Plaza at 106-I' Sector-106, Gurugram vide agreement dated 02.09.2019.
- b. That construction of aforesaid project got completed on 28.11.2019 and respondent offered possession of the unit to complainant on 30.11.2019. The complainant got the conveyance deed of the unit executed and registered on 01.03.2021.
- c. That a brand named Instakart contacted respondent for taking some area of the project (including complainant's 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 complainant on 06.10.2021), whereby parties agreed as under:

"...In supersession of the Buyer's Agreement 2nd September, 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.67.5/- 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.40.5/- 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.1,88,310.58/- 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 complainant. It is submitted that there can be two methods for calculation of complainant's commitment charges one strictly as per stipulations as contained in note no. 9 of Schedule C of developer buyer's agreement dated 02.09.2019 and other as per letter dated 04.10.2021.

- 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's agreement dated 02.09.2019, 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 655 (super area) = Rs.53,055/- p.m. X 36 months [*as per letter dated 07.03.2020 annexed herewith as annexure R-3].	21,22,848
B.	Amount already Paid (as per ledger statement annexed herewith as Annexure R-4)	14,95,907
C.	Balance commitment charges [A- B]	6,26,941
D.	Actual rental payable w.e.f. 05.07.2023 till 04.07.2024 @ Rs.27/- X 728 (super area)= Rs.19,656/- p.m. X 12 months	2,35,872
E.	Total rental/commitment charges payable till 04.07.2024 [C+D]	8,62,813

- f. That if the complainant's commitment charges, if calculated as per stipulations aforesaid letter dated 04.10.2021 (signed by the complainant), 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.67.5/- X 728 (super area) = Rs.49,140/- p.m. X 33 months	16,21,620
B.	Amount already Paid (as per ledger statement annexed herewith as Annexure R-4)	14,95,907
C.	Tenant Improvement Cost and brokerage adjusted from rental	1,88,310
D.	Balance Payable as on 04.07.2024 [A- (B+C)]	(-62,597)

- 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.
- h. That as per serial no. 22 (d) of Schedule A of the agreement dated 02.09.2019, the complainant has not opted/paid charges, per car for development of car parking area and therefore, the complainant is/was entitled for allotment of car parking area.
- i. That the instant complaint is barred by estoppel. It is submitted that upon execution of conveyance deed dated 01.03.2021, the complainant is now estopped from raising these belated claims/demands as he himself 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 complainants are entitled for commitment charges of Rs.7,70,687/- or any interest accrued thereon on account of any alleged deficiency. Rather, conveyance deed stands executed, the unit of the complainant has been already leased out, resulting into discharge of respondent from its responsibilities towards the complainant.
- l. 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.

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 objections raised by the respondent:

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

14. The respondent has raised an objection that the instant complaint is barred by estoppel as upon execution of conveyance deed dated 01.03.2021, the complainant is now estopped from raising these belated

claims/demands as he himself 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."

15. The Authority observed that though the conveyance deed has been executed on 01.03.2021 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 02.09.2019 read with letter dated 07.03.2020 for the purpose of leasing of the unit to the third-party by the respondent and the complainant intend to continue with the project, therefore the complainant is entitled to commitment charges as agreed between the parties vide agreement dated 02.09.2019. 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 complainant:

- G.I Direct the respondent company to pay a sum of Rs.7,70,687/- on account of deficiency in payments towards the complete commitment charges from July 2020 to July 2023, under the obligation as per the agreement dated 02.09.2019.
- G.II Direct the respondent company to pay a sum of Rs.2,50,550/- towards the interest on deficiency in payments which has suffered monetary loss from July 2020 to July 2023.
- G.III Direct the respondent company to pay the assured minimum rental charges for an amount Rs.81/- per month per sq. ft. of super area of the unit i.e., 728 sq. ft., which has been calculated

to be an amount of Rs.58,968/- per month, when the commitment charges are due in future.

16. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
17. In the present matter the complainant was provisionally allotted a shop on 05.04.2019 shop bearing no. Shop no. 7, Ground floor, Tower-B in the project namely The Plaza located in sector 106, Gurugram. The buyer's agreement was executed on 02.09.2019 and the complainant started paying the amount due against the allotted unit and paid a sum of ₹32,42,982/- for a total sale consideration of ₹39,70,512/-. As per clause 9 of schedule C of the agreement dated 02.09.2019 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.

18. 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.

19. In the present case, on 07.03.2020 at page no. 13 of the reply, the respondent sent letter to complainant which is in continuation of the agreement dated 02.09.2019 stating that since they are working on finalizing leasing arrangements, therefore payment of commitment charges effective from 30.11.2019, 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.

20. The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. An agreement for sale is defined as an arrangement entered between the promoter and allottee with freewill and consent of both the parties. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The different kinds

of payment plans were in vogue and legal within the meaning of the agreement for sale. One of the integral part of this agreement is the transaction of commitment charges inter-se parties. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for commitment charges between the promoter and allottee arises out of the same relationship. The provisions of section 11(4)(a) of the Act of 2016 provides that the promoter would be responsible for all the obligations under the Act as per the agreement for sale till the execution of conveyance deed of the unit in favour of the allottee.

21. 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 ₹21,22,848/- and the respondent has paid ₹14,95,907/-. Further the respondent agrees that an amount of ₹862,813/- 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, the commitment charges were to be paid by the respondent w.e.f. 01.10.2021 till 04.07.2024 to the tune of ₹16,21,620/- and the respondent has paid ₹14,95,907/- and further an amount of Rs.1,88,310/- has been adjusted towards tenant improvement cost and brokerage.
22. The respondent has mentioned that the respondent has already paid excess amount than it was supposed to pay as per letter dated 04.10.2021 and no amount is pending on part of the respondent towards commitment charges. However, it is the complainant who has to pay back an excess amount of ₹62,597/- paid by the respondent. 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 02.09.2019 and all the previous communications. However, there is no document placed on record by the respondent regarding the payments made in compliance of the letter dated 04.10.2021 or setting aside of the letter dated 07.03.2020 which is in continuation of the buyer's agreement dated 02.09.2019. 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 02.09.2019. 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 committed charges within 90 days from the date of this order.

G.IV Direct the respondent company to designate the independent car parking space for the complainant.

23. The complainant has raised concerns regarding the allocation of independent covered car parking. But as per schedule 22(d) of the agreement on page no. 47 of the complaint no amount has been paid for development of car parking area. Moreover, it is nowhere mentioned that the car parking is covered car parking.
24. The Authority, after carefully considering the submissions presented by the parties, finds that the complainant has failed to substantiate his 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.V Direct the respondent to pay litigation cost.

25. 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.

H. Directions of the Authority:

26. 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 respondents 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 respondents on account of said charges) as already agreed upon by the respondents in his reply within 90 days from the date of this order.



- ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

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

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

29. Files be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.05.2025

HARERA
GURUGRAM