

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

Complaint no. : 4922 of 2024
Order pronounced on : 12.12.2025

Mr Pushpkant Verma Through
Gpa Holder Ramrattan Goyal
R/o:House No. 451, Jattal Road, Neharpar,
Near Petrol Pump, Saundapur, Distt. Panipat

Complainant

Versus

M/s Magic Eye Developers Private Limited
Regd. office: GF-09, Plaza M6,
Jasola District Centre

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Rahul Ahuja (Advocate)
None

**Complainant
Respondent**

EX- PARTE ORDER

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

A. Unit and Project-related details:

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

S. No.	Particulars	Details
1.	Name of the project	The Plaza at 106, Sector-106, Gurugram
2.	Project area	3.73 acres area
3.	Nature of project	Commercial Colony
4.	DTPC License no.	65 of 2012 dated 21.06.2012 valid upto 21.06.2022
5.	Name of licensee	Magic Eye Developers
6.	RERA registered/not registered	Registered vide no. 72 of 2017 dated 21.08.2017 valid upto 31.12.2021
8.	Unit no.	0406, 4 th floor, tower B1 (page 49 of complaint)
9.	Unit area admeasuring	700 sq. ft. (page 49 of complaint)
10.	Date of execution of buyer's agreement	02.02.2013 [as per complaint on page 04]
11.	Possession clause	N/A
12.	Due date of possession	02.02.2017 [Calculated as per Clause 9.1 of the agreement to sell as per which the respondent was to handover the possession in 3 years from the date of execution of the plus 2 grace periods of 6 months]
13.	Total sale consideration	Rs. 29,26,000/- (As per agreement on page 53 of the complaint)
14.	Amount paid by the complainant	Rs. 18,41,054/- (As per receipts on page 70-77 of complaint)

15.	Refund notice send by the complainant	10.10.2019 (Page 79 of the complaint)
16.	Occupation certificate /Completion certificate	28.11.2019 (as per DTCP website)

B. Facts of the complaint:

- i. That the complainant is an allottee within the meaning of Section 2 (d) of the Real estate (Regulation and Development) Act, 2016.
- ii. Mr. Pushpkant Verma through GPA holder Mr. Ramrattan Goyal is a law abiding citizen residing at A-1102, Tulip Ivory, Sector 70, Gurugram - 122101.
- iii. M/S Magic Eye Developers Pvt. Ltd. a company registered under the companies act 1956, with its registered office Gf-09, Plaza M6 Jasola District Centre, Jasola, New Delhi - 110025 launched a residential group housing project titled "the plaza" being developed on a land parcel situated at Sector 106, Gurugram.
- iv. The complainant desired to purchase an apartment in the project being developed by the respondent. In this effect, the respondent assured to the complainant that they have taken all the necessary permissions and approvals for the project from the competent authorities and will deliver possession of the project within a period of three years plus two grace period of six months each from the date of execution of the Builder Buyer Agreement.
- v. The complainant believing the bona fide & eloquent representations made by the respondent and with regards to the project, decided to book an apartment in the project. The complainant agreed to pay a total sale consideration of Rs. 37,92,200/- to the respondent for the apartment.
- vi. That the respondent allotted the complainant a unit in the project i.e. unit no. 0406, measuring 700 sq feet, 4th floor, tower b1, "the plaza at 106", Sector 106, Gurugram, Haryana. It is further submitted that the payment towards the

total consideration of the unit allotted to the complainant was to be paid in multiple stages under construction link plan.

- vii. That the complainant entered into a builder buyer's agreement dated 02nd February, 2013 with the respondent and were constrained to sign the one sided agreement prepared by the respondent on the dotted line.
- viii. That initially, an amount of Rs. 2,00,000 vide cheque No. 004752 dated 27.03.2012 drawn on ICICI Bank, respectively, were paid to the Respondent towards provisional application of the unit in the above said project.
- ix. Subsequently, the complainant paid Rs.4,00,000/- vide cheques bearing no. 112215, 112216, 112213, 118565 dated 07.04.2012, 07.04.2012, 07.04.2012 & 10.04.2012 drawn on ICICI, respectively, were paid to the respondent towards confirmation of booking of unit in the above said project. Thereafter, the complaint vide cheque No. 401986 dated 13.07.2012 paid Rs. 4,30,900/- towards the next installment of the said unit.
- x. Further thereto, on 23rd april, 2013 the respondent sent a letter to the complainant with the subject "intimation of due instalment towards booking of unit admeasuring 200 sq. ft. in super area in our project "The Plaza at 106" situated at Sector-106, Gurgaon, Haryana". It is pertinent to note here that in the said letter due to delay in paying the instalment by the complainant an interest @18 percent was charged by the respondent over and above the amount that was needed to be paid in terms of the instalment. That the said instalment was duly paid by the complainant alongwith delay payment charges of Rs. 2,10,154/- on 20.05.2013 vide cheque No. 118573 drawn on HDFC Bank.
- xi. That thereafter the complainant regularly followed up with the respondent for the construction of the project. However, the respondent made false claims to the complainant that the project will be completed on time as per the

- agreement between the parties. It is submitted that seeing no progress in the construction of the project, the complainant made regular calls to the customer care number of the respondent and even after visiting the office of the respondent. The complainant was left oblivious as to whether the project will be completed on time. nonetheless, the complainant in garb of getting its allotted unit, was compelled to make another payment to the respondent vide cheque no. 084086 dated 14.03.2016 of Rs. 6,00,000/- so as to fulfill its part of the obligations of the one sided agreement between the parties.
- xii. That in total the complainant till date has paid an amount of Rs. 18,41,054/- towards its part of the obligations in terms of the unit allotted to the complainant by the respondent.
- xiii. It is pertinent to note herein, that the complainant having paid more than 70 percent of the basic sale price of the unit allotted in terms of the agreement signed between the parties, had left with no choice rather to wait for the completion of the project, as their were several one sided clauses mentioned in the agreement signed between the parties, that stipulated various amount of deductions which were to be made in favour of the respondent.
- xiv. It is also worthwhile to mention herein, that the initial allotment of the unit was made on 27.03.2012 on a payment of Rs. 2,00,000/- and it was expounded to the complainant by the respondent that the project will be completed within a period of 3 years of the initial allotment.
- xv. Nevertheless, the respondent made the complainant to wait for almost one year for execution of the builder buyer agreement. The complainant had to follow up rigorously with the respondent for the execution of the builder buyer agreement and finally after a year of following up with the respondent on 02.02.2013 builder buyer agreement was executed between the parties. Further, the complainant after reading the terms of the agreement was

shocked to see that the respondent had malafidely further extended the date of possession of the project for another three years from the execution of the abovementioned agreement.

xvi.

xvii. It is worth mentioning herein, that the complainant who had paid more than ten lakh rupees even before the execution of the builder buyer agreement between the parties which tantamounted to be more than 30% of the total amount of the basic sale price of the said project, was made to sign on a completely malafide and one sided agreement wherein the date of possession was further extended by 3 years by the respondent. However, being vulnerable and in dire need of the unit allotted, the complainant had no other choice rather to sign the abovementioned agreement.

xviii. That thereafter the complainant repeatedly asked for the completion of the project and the status of possession of their unit from the respondent, however, the respondent evaded sharing the details of handing over the unit with the complainant so as to erroneously guise the real progress of the project.

xix. That the complainant seeing no progress in the construction of the project and in dire need of a home had to invest their hard earned money in some other aspects so as to enable them a roof for their head. That due to the said reason, the complainant left with no other option rather to cancel their unit vide an email dated 10th October, 2019.

xx. That the said email was duly replied by the respondent, stating that the said unit has been cancelled and "as per developer buyer agreement signed by you, certain deductions will be applicable. Please find below the summary of the deductions: a) Earnest money deposit 15% b) Taxes c) brokerage paid, if any". That the respondent clearly new that in plethora of judgements passed by the

Hon'ble Apex Court any deduction after there is a delay in construction of the project is unlawful and bad in law. However, the respondent arbitrarily in its email dated 10th october, 2019 stated about all the illegal deductions even after the project was delayed by more than 3 years.

- xxi. It's noteworthy to mention herein, that in the aforementioned circumstance, the respondent's project had already been delayed for almost three years, and the complainant had no alternative but to cancel the unit because they were in severe need of a house and had lost all faith in the project of the respondent. Also, the complainant even after regularly following up with the respondent were unable to gather any information regarding the date of completion of the project.
- xxii. That although, the complainant sent an email acknowledging the cancellation of the unit allotted to the complainant. Nevertheless, the respondent till date has not repaid the amount paid by the complainant in consideration for the said unit. Further, there is no communication whatsoever received by the complainant, whether the respondent even intends to repay the amount paid by the complainant to the respondent for the above stated unit.
- xxiii. It is submitted that as per the terms agreed upon between the respondent and the complainant in the builder buyer's agreement, in accordance with clause 9.1 of the same agreement, the respondent was to provide possession of the apartment to the complainant within three years plus 2 grace period each, from the date of execution of the agreement. It is submitted that the respondent has abjectly failed to complete the construction of the project on time and has been only able to obtain the occupation certificate of the above project on 28.11.2019.
- xxiv. The complainant submit that a bare reading of clause 9.1, 10.1, 10.2 37 of the agreement points to the mala fide of the respondent in never originally

intending to hold good to the representations and promises made by it to the complainant at the time of booking with regards to the delivery of possession of the apartment. The aforementioned clause is so arbitrarily and vaguely drafted that a strict reading of the same would lead to a conclusion wherein the respondent seeks to accept absolutely no responsibility, liability, or obligation whatsoever with regards to providing a timely delivery of the project.

- xxv. It is submitted that the complainant, despite the issues as explained above, continued to make all the payments as demanded and prescribed by the respondent, honouring the promises made by them, and hoping that the respondent will hold good on its promises as well, especially with regards to timely possession of the apartment. In lieu of fulfilling their commitment to the respondent.
- xxvi. The complainant, having trust in the respondent's assurances and anticipating to receive the cherished home they have strived for many years to acquire, persisted in making payments whenever requested by the respondent. Nevertheless, after failing to give possession to the complainant on time, the respondent illegally and unlawfully till date is enjoying with the hard earned money of the complainant.
- xxvii. That the respondent only after persistent calls, visits, inquiries and follow ups repaid a sum of Rs. 1,50,000/- vide cheque no 2601 dated 31.05.2022 and Rs. 3,00,000/- vide cheque no. 2377 dated 14.03.2023 to the complainant. That from the amount paid by the complainant to the respondent an amount of Rs. 13,91,054/- still remains to be due on the part of the respondent to the complainant, which the respondent is still keeping with him even after repeated reminders of the complainant and also even after being well aware

that this Hon'ble Court and the Hon'ble Apex Court have expressly ordered refunds in cases of delayed projects in large number of their rulings.

- xxviii. The complainant is greatly aggrieved by this three years delay caused by the respondent in delivering the apartment, and seek the same quantum of interest from the respondent for the delay in delivering the possession of the apartment as the respondent sought from them for delay in making payments, i.e. 18% p.a.
- xxix. That the principle laid down in pioneer's case has been followed consistently in many cases where the terms of the apartment buyer's agreement were found to be one-sided and entirely loaded in favour of the developer, and against the allottee at every step. The instances where the terms of the apartment buyer's agreement were found to be oppressive, constituting unfair trade practice, the court has not given effect to such terms of the agreement.
- xxx. That the Hon'ble Apex Court as well as this Hon'ble Court has not given effect to such terms of the agreement builder buyer's agreement where the terms of the agreement have been found to be oppressive, constituting unfair trade practice.
- xxxi. That on one side the builder has stipulated and exorbitant interest on delayed payments made by the complainant and forfeiture clause. On the other hand if the respondent fails to deliver the project on time the above clause wherein interest free repayment has been allowed to the respondent has been implanted in the agreement.
- xxxii. The complainant submit that the respondent is liable to pay to them an interest amount totalling to Rs. 36,88,866/- as on 01/10/2024 account of the delay caused by the respondent in delivering the possession of the apartment.
- xxxiii. It is submitted that various calls were made by the complainant to the officials of the respondent and their customer relationship personnels. however, they

were shocked to see that there was no clear intimation regarding the delivery of possession. It is further submitted that the cancellation of the unit allotted to the complainant was duly accepted by the respondent due to the fact that the complainant was kept in dark by the respondent that they are about to receive occupation certificate of the project. That the respondent never stated to the complainant at the time of cancellation as well that the project is about to get its occupational certificate.

C. Relief sought by the complainant:

3. The complainant has sought the following relief(s):
 1. Direct the respondent to refund the amount of Rs. 18,41,054/- paid by the complainant in consideration for the unit along with interest.
4. The present complaint was filed on 01.10.2024. The counsel for the respondent neither appeared nor filed the reply in the complaint. Despite multiple opportunities for filing reply on 24.11.2025, 23.05.2025, 22.08.2025, it failed to comply with the orders of the authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding to file written reply. Therefore, the authority assumes/ observes that the respondent has nothing to say in the present matter and accordingly the authority proceeds with the case ex-parte.
5. Copies of all the relevant documents have been filed and placed on 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 complainant.

D. Jurisdiction of the Authority:

6. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.1 Territorial jurisdiction

7. 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 the entire Gurugram District for all purposes 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.

D.II Subject-matter jurisdiction

8. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

9. Hence, given 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.

E. Findings on relief sought by the complainant:

E.I Direct the respondent to refund the amount of Rs. 18,41,054/- paid by the complainant in consideration for the unit along with interest.

10. In the present complaint, the complainant was allotted a commercial unit bearing No. 0406, admeasuring 700 sq. ft., situated on the 4th Floor, Tower B1, in the project titled "The Plaza at 106", Sector-106, Gurugram. A builder

buyer agreement was executed between the parties on 02.02.2013 for a total sale consideration of Rs.29,26,000/-. It is not in dispute that the complainant has paid an amount of Rs.18,41,054/- towards the said unit.

11. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: Return of amount and compensation

18(1). If the promoter fails to complete or is 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; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

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, 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: Provided that where an 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 the possession, at such rate as may be prescribed." (Emphasis supplied)

12. **Due date of handing over possession:** As per clause 9.1 of the agreement to sell dated 02.02.2013, the respondent was to hand over possession of the allotted unit within three years from the date of execution of the agreement along with two grace periods of six months each. Accordingly, the due date of possession worked out to 02.02.2017.

13. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest. However, the allottees intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed shall be the State Bank of India highest marginal cost of lending rate +2%; Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

14. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
15. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 12.12.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
16. On consideration of documents available on record as well as submissions made by the parties, the authority is satisfied that in terms of the buyer's agreement executed between the parties on 02.02.2013, the possession of the subject flat was to be delivered within a period of 36 months from the date of execution of buyer's agreement plus 2 grace periods of six months. Therefore, the due date of handing over of possession was 02.02.1017. Now the complainant after lapse of due date of possession has filed the present complaint seeking refund of the paid-up amount along with interest.
17. It is a matter of record that the respondent did not complete the project and did not obtain the Occupation Certificate by the committed due date. The Occupation Certificate was eventually obtained on 28.11.2019.
18. The complainant, having waited beyond the committed period of possession and finding no substantial progress in the project, addressed an email dated 10.10.2019 seeking cancellation of the allotted unit and refund of the amount

paid. It is evident that the said request was made after expiry of the due date of possession and prior to obtaining of the Occupation Certificate.

19. The due date of possession as per agreement was 02.02.2017. The Occupation Certificate was obtained only on 28.11.2019. Thus, there was delay beyond the committed period. The subsequent obtaining of the Occupation Certificate does not defeat the statutory right which had already crystallized in favour of the complainant. The promoter having failed to hand over possession by the committed due date is liable to refund the amount received along with interest at the prescribed rate.
20. Further, the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.** (supra) reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022. observed as under:

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

21. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice

to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

F. Directions of the Authority

22. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the amount i.e., Rs.18,41,054/- received by it from the complainants along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- 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. Complaint stands disposed of.

24. File be consigned to registry.

Dated: 12.12.2025



(Arun Kumar)

Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram