

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

Complaint no.: 5262 of 2024
Date of filing: 05.11.2024
Date of decision: 07.04.2026

Neelam Nijhawan

R/o: F-60, Bali Nagar, Ramesh Nagar

Complainant

Versus

M/s Magic Eye Developers Private Limited

Registered office at: GF 09, M-6, Plaza, Jasola,

District Centre, Jasola, New Delhi, 110025

Respondent

CORAM:

Sh. Arun Kumar

Chairman

APPEARANCE:

Sushil Puri (Advocate)

Complainant

None

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under

the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

Sr. 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
6.	Name of licensee	Magic Eye Developers Private Limited
7.	Unit no.	Unit No. 29, Ground Floor, Tower- C (As per page no. 91 of the complaint)
8.	Unit measuring	870 sq. ft. (super area) & 380 sq. ft. (carpet area) (As per page no. 91 of the complaint)
9.	Welcome letter	08.08.2019 (As per page no. 72 of the complaint)

10.	Date of execution of Agreement	21.09.2019 (As per page no.78 of the complaint)
11.	Possession clause	<p>7. Possession of the unit 7.1 Schedule for possession of the unit- 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..... (As per page no. 82 of the complaint)</p>
12.	Commitment charges	<p>Clause 9.of schedule C of BBA</p> <p>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</p>



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 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,

		<p><i>allottee shall have to right to himself use/grant lease/license of Unit to appropriate person.</i></p> <p><i>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.</i></p> <p><i>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</i></p> <p>(As per page no. 94 of the complaint)</p>
13.	Due date of possession	30.06.2022 (31.12.2021 plus As per RERA registration 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)
14.	Total sale consideration	Rs.60,60,420/- (As per payment plan on page no. 73 of the complaint)
15.	Total amount paid by the complainant	Rs.52,06,949/- (As per offer of possession on page no. 96 of the complaint)

16.	Occupation certificate	28.11.2019 (As per website of DTCP)
17.	Offer of possession	27.12.2019 (As per page no. 96 of the complaint)
18.	Conveyance deed	25.04.2023 (Page 117 of complaint)

B. Facts of the complaint

3. The complainant has submitted as under:

- I. That the complainant purchased a non-lockable retail shop no. - 29, measuring 870 square feet super area (carpet area of 380 square feet) at ground floor of tower c in the commercial project known as plaza at Sector - 106 - 1, Gurugram.
- II. That the respondent though its 'channel partners' M/s Orion Realtors, signed and accepted the booking form along with its agreed terms and conditions. A cheque no. 189948 dated 08.08.2019 for Rs. 2,24,000/- was received from complainant as booking amount and payment receipt was issued by respondent on 08.08.2019. Between booking the shop and signing of agreement, with the schedule - c - payment plan called down payment plan (10% discount), the respondent issued to complainant an allotment letter, customer id: plaza/00635/19-20, demand letters and issued two (2) payment receipts for a total amount of Rs. 51,54,880/- paid by complainant on 08.08.2019. In addition, a TDS certificate is also issued for such payments.
- III. That apart from what has been detailed above, all the terms and conditions of the sale / purchase of said property have been reiterated and detailed in the 'agreement' (dba) between complainant and respondent which was signed on 21.09.2019 and a copy thereof was sent by respondent to complainant.

- IV. That the respondent through a letter dated 27.12.2019 sent to complainant a 'demand cum offer of possession' claiming to have received 'occupation certificate' from the concerned government authorities on 28.11.2019. The letter asked the complainant to pay (after deducting the already paid amount of Rs. 52,06,949/-) the entire outstanding payment of Rs. 9,02,120/-.
- V. That the respondent had wrongly charged GST on external development charges (Rs. 44,474/-) and internal development charges (Rs. 4,176/-). Both being government levies and therefore are not subject to levy of GST. The complainant paid Rs. 8,99,380/- on 29.01.2020 and applicable TDS certificates were also issued it under good belief as being a layman did not know provisions of GST law in this regard. This effective resulted in an excess payment of Rs. 48,380/-, which the respondent must be directed to refund the excess payment received from the complainant along with applicable interest thereon.
- VI. That on 07.03.2020, immediately after collecting the entire payment for the shop, the respondent quickly sends a letter to complainant 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. On March 24, 2020, Covid 19 nationwide lockdown announced by the Central Government. An email communication dated 12.03.2020 was received by complainant from respondent arbitrarily postponing payment of commitment charges to start effective 01.06.2020 and reply thereto by complainant dated 14.03.2020 rejecting this postponement.
- VII. That during May 2020, due to spread of Covid 19 pandemic, Government of India through its different limbs issued various

- circulars, notifications and guidelines granting relief to different business segments including real estate.
- VIII. That the respondent soon could sense another good opportunity, who have already been in default of not making payment of commitment charges which became due as per clause 10 to schedule c to the dba, again tried to take shelter of Covid 19 and quickly sends an email communication dated June 1, 2020, to complainant titled 'important communication' through which once again 'announced' unilaterally and arbitrarily further postponement of payment of commitment charges till June 2021 - .
- IX. That on careful reading of the government circulars, notifications and guidelines issued through its various limbs, respondent soon realized that the conditions under which invocation of force majeure clause was allowed did not cover situations like payment of commitment charges to complainant therefore respondent once again changes gears and announced that 'despite very difficult market conditions' and 'in consultation with their channel partners' on June 23, 2020 sends another letter titled 'important communication' that they will start paying commitment charges effective June 1, 2020 @ 50% of the agreed rate but for 48 months .This was nothing but a desperate attempt on the part of respondent to somehow take benefit in the name of Covid 19 assuming that the complainant will either not raise any objection as they may not be aware of details of reliefs granted by the government or as they are not connected with each other, no worthwhile protest is expected.
- X. That the complainant wrote a letter to respondent on 26.06.2020 rejecting his proposed to 50% commitment charges for 48 months effective 01.06.2020. Another reminder email was written by

- complainant to respondent on 22.07.2020 rejecting their payment of 50% commitment charges and the excuse of covid 19 given for this reduction in payment, as the government had never allowed invocation of force majeure clause for fulfilment of such financial commitments.
- XI. That in any case the respondent was under contractual obligation to have proactively put in place leasing agreements with potential retail brands ideally before (in anticipation of receiving the occupation certificate soon) the offer of possession was made (refer clause 9 of schedule c to agreement) but he did nothing to finalize any such arrangement in time and in fact till today i.e., October 2024, nothing has been done by respondent in this regard. The entire project even after 4 years and 10 months of offer of possession still looks completely deserted without even a single leased shop operating out from there. This clearly shows that the respondent's intention was clearly never to fulfill any of his commitments made in our written agreements. During these past 4 years and 10 months, in close interaction at various levels with the respondent, complainant has no hesitation in saying that the respondent has always had very narrow minded approach in putting resources at play therefore none of his leasing objectives materialized mainly because of his uncontrolled greed to make money in anything which he did and the substandard team put in place could not deliver.
- XII. That in blatant violation of terms and conditions of dba and ignoring strong protests and rejections by complainant, respondent started paying commitment charges @ 50% of originally agreed amount effective 01.06.2020 and continued it till 31-10-2022. The last monthly instalment of 50% commitment charges was paid to complainant on 14.02.2023, which pertained to the month of October 2022.

XIII. That in the interim, upon complainant's consistent and repeated requests through emails along with an agenda of issues to discuss with MD of the company, they were ultimately granted a meeting on April 21, 2023 in the office of respondent, which was attended by 7 - 8 shop and studio apartment owners to discuss multiple issues such as delayed payment of commitment charges, absence of any serious efforts for leasing of most of the shops lying vacant, handover of keys with physical possession of certain shops and the issue of stack parking, the meeting was attended by senior officials of the respondent company namely Mr. Anil Kohli, Chief Revenue Officer, complainant was told as follows:

- a. The respondent is working on making leasing arrangements and will soon revert back with a few proposals.
- b. The respondent has decided that whatever commitment charges were being paid till now will also be stopped immediately as company cannot continue to pay it from its own pocket for the idle lying shops. In nut shell it said as follows:
- c. Commitment charges of any nature including whatever stands outstanding on that day is being stopped by the respondent as they cannot be expected to continue paying it from their own pocket.
- d. Such a surprising communication all of a sudden meant another betrayal by respondent on yet another illogical reasoning, as the same is a written condition of this purchase of shop as per agreement. The complainant felt not only outraged, cheated and frauded once again.
- e. This also meant respondent has no respect for any written agreement or applicable law in force

- XIV. That though the respondent did not honor its contractual obligations of paying commitment charges effective 28.11.2019 in line with the commitment made through 'agreement to sell' dated 21.09.2019 and the consequent financial hardship caused by it. This was despite the repeated requests, reminders and various follow ups made on regular basis in person as well as in writing, the respondent on request from complainant, eventually got the conveyance deed for the unit in question executed vide entry no. 1360 on 02.05.2023 i.e., after over 40 months of the date of offer of possession as mentioned in clause 10 of schedule c to the agreement dated 21.09.2019.
- XV. That the respondent, out of a total due commitment charges of Rs. 25,36,920/- payable in 36 months has paid only Rs. 11,62,755/- till date leaving an unpaid principal amount of Rs. 13,74,165/- to the complainant.
- XVI. That after having exhausted every possible request, follow up and legally possible argument, the complainant decided to send a legal notice to respondent on 07.10.2024 asking him to comply with his legally binding contractual obligations but the Respondent has chosen to ignore the same too. In consequence, the complainant has filed this complaint seeking relief as detailed later in this complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to immediately pay commitment charges not paid or short paid amounting to Rs.13,74,165/- along with applicable interest for period of delay till the date of its actual payment.
 - ii. Direct the respondent to refund a sum of Rs.48,380/- excess paid towards GST on EDC and IDC wrongly charges by respondent.

iii. Direct the respondent to pay a sum of Rs.1,00,000/- towards the cost of legal notice and litigation costs and compensation.

5. On the date of hearing, the authority explained to the respondents/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.
6. Despite due service of notice, no reply has been received from the respondent with regard to the present complaint and also none has put in appearance on its behalf before the Authority. In view of the above, the defence of the respondent is struck off.
7. All other averments made in the complaints were denied in toto.
8. 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 those undisputed documents and submissions made by the parties.

D. Jurisdiction of the authority

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, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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 allottees as per 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 of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

9. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

E. Maintainability of the complainant:

10. That in the present case in hand the allottee was allotted the unit 29, on Ground floor in Tower C admeasuring 870 sq. ft. (super area) & 380 sq. ft. (carpet area) in the project of the respondent namely "Plaza at 106-I", Sector 106, Gurugram. Thereafter agreement for sale was executed between the parties on 21.09.2019. As per clause 7.1 of the agreement for the purposes of this agreement, date mentioned at serial no. 27A in schedule A shall be deemed to be date of 'Offer of Possession of Unit' to the allottee. Therefore, the due date comes out to be 30.06.2022.

11. That the occupation certificate was obtained on 28.11.2019 and on 27.12.2019 the possession was offered to the allottee. Also, the conveyance deed dated 25.04.2023 was also executed between the parties in respect of the said unit. The complainant has filed the present complaint on 05.11.2024.

12. The conveyance deed is a legal document that transfers the title of property from one party to another, signifying the completion of the property transaction especially regarding payments related to the purchase price, taxes, registration fees, and any other contractual financial commitments outlined in the agreement. However, despite the conclusion of the financial obligations, the statutory rights of the allottee persist if any provided under the relevant Act/Rules framed thereunder. Execution of conveyance deed is a sort of entering into a new agreement which inter alia signifies that both parties are satisfied with the considerations exchanged between them, and also that all other obligations have been duly discharged except the facts recorded in the conveyance deed. The said clause reproduced below as:

Vendor has already delivered the possession of said Unit to Vendee(s). Vendee(s) acknowledge that they have received the possession of said Unit to their complete satisfaction and have signed the Possession Certificate in respect thereof. Vendee(s) further assures that he/she/they shall have no claim, whatsoever against the Vendor 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.

13. It is pertinent to mention here that complainant took the possession and got the conveyance deed executed, without any demur, protest or claim. The complainant has neither raised any grievance at the time of taking over

the possession or at the time of execution of the conveyance deed, nor reserved any right in the covenants of the conveyance deed, to claim any other charges. Also, it is a matter of record that no allegation has been levelled by the complainant that conveyance deed has been got executed under coercion or by any unfair means.

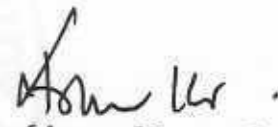
14. The Authority is of view that after the execution of the conveyance deed between the complainant and the respondent, all the financial liabilities between the parties come to an end except the statutory rights of the allottee including right to claim compensation for delayed handing over of possession and compensation under section 14 (3) and 18 of the RERA Act, 2016. In view of the above, the complainant cannot press for any other relief with respect to financial transaction between the parties after execution of conveyance deed except the statutory obligations specifically provided in the Act of 2016.
15. The complainant remained dormant of his rights for more than 4 years and they didn't approach any forum to avail his rights. As the occupation certificate was obtained on 28.11.2019 and the possession was offered to the complainant on 27.12.2019. Further, as observed in the landmark case i.e. **B.L. Sreedhar and Ors. V. K.M. Munireddy and Ors. [AIR 2003 SC 578]** the Hon'ble Supreme Court held that "Law assists those who are vigilant and not those who sleep over their rights." Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law.
16. In the light of the above stated facts and applying aforesaid principles, the authority is of the view that the present complaint is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. The procedure of law cannot be allowed to be

misused by the litigants even in cases where allottees have availed certain benefits prior to the execution of conveyance deed. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. In light of the above, the complaint is not maintainable being barred by limitation.

17. In view of the above, the complaint is not maintainable being barred by limitation and is hereby dismissed with liberty to the complainant to seek appropriate remedies before the appropriate forum in accordance with law.

18. The complaint and applications if any stands disposed of.

19. Files be consigned to registry.


(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 07.04.2026