

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

Complaint no.: 682 of 2024

Date of filing: 20.02.2024

Date of decision: 27.01.2026

Pulkit Nehra

R/o: C2/313, Jalwayu Tower, Sector 56, Gurugram

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:

Shri. Arun Kumar

Chairman

Shri. Phool Singh Saini

Member

APPEARANCE:

Maninder Singh (Advocate)

Complainant

Vijay Kumar Sharma (Advocate)

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 and location of the project	"Plaza at 106-I", Sector 106, Gurugram
2.	Nature of the project	Commercial
3.	Project area	3.725 acres
4.	DTCP license no.	65 of 2012 dated 21.06.2012 valid up to 21.06.2022
5.	Name of licensee	Magic Eye Developers
6.	RERA Registered/ not registered	72 of 2017 dated 21.08.2017 valid up to 31.12.2021
7.	Unit no.	308, 3 rd Floor & Tower-B (As per page no. 35 of the complaint)
8.	Unit area admeasuring	700 sq. ft. (Super area) (As per page no. 36 of the complaint)
9.	Date of execution of agreement	14.09.2021 (As per page no. 13 of the complaint)
10.	Possession clause	7. POSSESSION OF THE UNIT



		<p>7.1 As construction of unit is complete, allottee may take ownership possession of unit immediately on making payment of complete consideration to promoter. 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.</p> <p>(As per page no. 17 of the complaint)</p>
11.	Commitment charges	<p>Clause 8. of schedule C of BBA Commitment Charges: Irrespective of anything contrary contained in the body of agreement, Promoter shall be entitled to rent out the unit along with other adjoining units to appropriate tenant for such tenure (which may be even beyond the committed period, mentioned below) and other terms and conditions, which promoter may deem fit and proper as per prevailing market conditions.</p> <p>Promoter has assured allottee that subject to allottee having made payment or complete consideration for unit allottee shall get minimum of following amount for a period of 36 (thirty-six months) from sub-leasing/renting of unit with effect from date of making complete consideration for unit by allottee to promoter (committed period)</p>



		<p><i>Rs.60/- per month per square feet of super area of unit (inclusive of all taxes). In case during the committed period, rent realised from sub-leasing of unit is less than the aforesaid amount, promoter shall pay the shortfall to allottee as commitment charge. All payments shall be made on monthly basis after deduction of TDS. 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. Commitment charges will not be payable for force majeure period. Commitment charges shall be payable only if allottee has made payment of his all dues to promoter in time. 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."</i></p> <p>(As per page no. 28 of the complaint)</p>
12.	Due date of possession	30.06.2022 (Note: 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)
13.	Total sale consideration	Rs.34,46,211/- (As per receipts on page no. 42-46 of the complaint)
14.	Amount paid by the complainant	Rs.34,46,212/- (As alleged by the complainant on page no. 10 of the complaint)
15.	Occupation Certificate	28.11.2019 (As per page no. 3 of the reply)
16.	Physical handover of possession	04.06.2022 (As per page no. 9 of the reply)
17.	Conveyance Deed	08.12.2021 (As per page no. 31 of the complaint)

B. Facts of the complaint

3. The complainant has submitted as under:

- i. That in the year 2021, the respondent, through 360 realtors (broker), approached the complainant with an offer to buy its above-mentioned project. The respondent arranged the visit of its representatives to the complainant, wherein it was categorically assured and promised by the respondent to the complainant that they already have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project and it would hand over the unit soon. Relying upon those assurances and believing them to be true, the complainant booked a commercial unit bearing no. 0308/third floor having a super area of 700 sq. ft at plaza at 106 Gurugram for a total sale price of Rs.34,46,212/-. It was further assured and represented to the complainant by the respondent that they had already taken the

required necessary approvals and sanctions from the concerned authorities and departments to develop and complete the proposed project on the time and accordingly, the complainant paid complete amount in a single day to the respondent on 07.09.2021.

- II. That at the of booking the aforesaid unit it was assured and agreed by the respondent that the unit is a lockable unit the complainant could not use it for its own use and the respondent will only have the power to lease the unit and in return the complainant will get a monthly return at the rate of ₹60 per sq ft of the total super area that is Rs. 42,000/- per month after deducting the TDS the respondent will pay Rs.37,800/-.
- III. That it is also categorically decided and agreed between both the parties that the respondent will transfer the amount of assured return directly in the account of the complainant every month it was also agreed between the parties that there shall be a commitment period till 31st March 2024. The respondent acting cleverly sold the unit at a very high price to the complainant by offering him a scheme of assured return and later on did not fulfilled the condition of the scheme, the respondent paid as per the condition agreed between the parties for sometime but later on refused and stopped the payments and started giving lame excuses to the complainant.
- IV. That the complainant purchased and made the complete payment in the month of August 2021 and the respondent immediately from that month started paying assured return in the account of the complainant and the respondent lastly paid the assured return for the month of October 2022 after that the respondent stopped making the payment and started making excuses to escape from the liability of monthly assured return payment.

- V. That the compliant purchased the unit only upon the assurance of the respondent and all the financial plannings of the complainant were based on the timely payment of the monthly assured return which the respondent has now clearly refused to pay. As on today it has become almost 15 months but the respondent not paid a single penny to the complainant whereas the complainant is facing financial hardship and is running from pillar to post to meet his financial needs and all of his financial planning are disturbed and it is balanced.
- VI. That in a conversation one of the representative of the respondent has clearly said to the complainant that the complainant should take the key of the unit in his hand lease out the unit because they don't have any tenant as of now and they will not pay any amount in lieu of assured return to the complainant.
- VII. That the respondent has agreed to pay the monthly assured return to the complainant by signing agreement with the complainant and now the respondent can not escape from his liability, as per the calculation of the complainant it has become an amount of Rs.6,30,000 is outstanding to be paid by the respondent to the complainant till today the date of filing of the present complaint.
- VIII. That the cause of action accrued in favor of the complainant and against the respondent on February 2023 when the complainant had lastly paid the assured return for the month of October 2022 in the account of the complainant and it further arose when respondent failed /neglected to pay further. The cause of action is continuing and is still subsisting on day-to-day basis as the respondent is still not making the payments within the stipulated deadlines.

IX. That the complainant further declares that the matter regarding which the present complaint has been made is not pending before any court of law and any other authority or any other tribunal on the subject matter.

C. Relief sought by the complainant:

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

i. Direct the respondent to pay interest at the applicable rate on account of delay in offering possession on Rs. 6,30,000/- along with future outstanding till the realization of the amount pending towards the outstanding assured return arrears for the aforesaid unit.

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.

D. Reply by the respondent

The respondent has contested the complaint on the following grounds:

I. That the complainant took the allotment of unit no.0308 on 3rd floor, tower b-2 of project named 'the plaza at 106-1' Sector-106, Gurugram vide agreement dated 14.09.2021. Note No. 7 of Payment Plan-I appended to Agreement dated 14.09.2021 talks about commitment charges. It is a matter of record that construction of aforesaid project got completed and occupation certificate stands granted on 28.11.2019. The complainant got the conveyance deed of the Unit executed and registered on 08.12.2021.

II. That in contradiction to the aforesaid clause relating to commitment charges, complainant took the physical possession of the unit, from

respondent on 04.06.2022. It is submitted that after taking physical possession of the Unit, the complainant cannot claim commitment charges from the respondent as the unit is no longer available with the respondent for further leasing.

- III. That the respondent has already paid a sum of Rs.5,62,258/- to complainant towards commitment charges. It is submitted that the complainant is not entitled to commitment charges for any period after the complainant took over the physical possession of the unit and for the period affected by Covid-19. As complainant is also not entitled to commitment charges because the complainant and other allottees did not accept various leasing offers.
- IV. That as per agreement, commitment charges would be payable subject to conditions that allottees shall not create any hindrance in renting of such units by promoter or decline to avail the renting opportunity available with promoter failing which respondent/promoter shall stand discharged of its obligations of payment of commitment charges to allottee.
- V. That the instant complaint is barred by Estoppel. It is submitted that upon execution of conveyance deed dated 08.12.2021, the complainant is now estopped from raising any alleged 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.”.

VI. Further vide clause 8(i) of the conveyance deed it was further agreed that “this deed constitutes complete agreement and understanding between the parties on the subject hereof and supersedes all prior offers, brochures, negotiations and/or agreements, either written or oral.”

VII. That after handing over of possession and the execution of conveyance deed, disputes relating to commitment charges are beyond the jurisdiction of this Hon’ble Authority. Further, the instant complaint has filed for alleged delay in possession. However, it is clearly mentioned at serial no.20 of Schedule-A of said agreement dated 14.09.2021 that *“Construction is complete and Occupation Certificate stands granted on 28.11.2019.”* Therefore, no question of alleged delay in offering of possession. Further, conveyance deed of said unit was already executed in favour of the complainant on 08.12.2021 (i.e. *prior to date of Completion of Project as well date of offer of possession of Unit as stated in serial no.20 of Schedule-A of said agreement dated 14.09.2021.*). Further, instant complaint for alleged claim for delay in possession is not maintainable and Complainant is not entitled for alleged claim for delay in possession and therefore, instant complaint is liable to be dismissed.

6. All other averments made in the complaints were denied in toto.

7. 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.

E. 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.

8. 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.

F. Maintainability of the complainant:

9. That in the present case in hand the allottee was allotted the unit 308, on 3rd floor in Tower B admeasuring 700 sq. ft. in the project of the respondent namely "Plaza at 106-I", Sector 106, Gurugram. Thereafter agreement for sale was executed between the parties on 14.09.2021. 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.
10. That the occupation certificate was obtained on 28.11.2019 and on 04.06.2022 the apartment was handed over to the allottee. Also, the conveyance deed dated 08.12.2021 was also executed between the parties in respect of the said unit. The complainant has filed the present complaint on 20.02.2024.
11. 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.

Vendor hereby assures pthat said unit is free from all encumbrances, charges , liens, litigations and vendor is fully entitled to execute this deed.

12. 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.

13. 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.

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

15. The complaint stands disposed of.

16. Files be consigned to registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.01.2026