

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

Complaint no. : 4154 of 2020
First date of hearing : 23.12.2020
Date of decision : 03.02.2021

Pavan Raina

Address:-DX-115, Kendriya Vihar, Sector - 56,
Gurugram-122011, Haryana

Complainant

Versus

Magic Eye Developers Pvt. Ltd.

Registered office at:- GF-09, Plaza M-6,
District Centre, Jasola, New Delhi - 110025

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Pavan Raina
Pawan Kumar Ray
Ms. Neelam Gupta

Complainant in person
Advocate for the Complainant
Advocate for the Respondent

BRIEF

1. The present complaint dated 07.12.2020 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 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 them.

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

S.No.	Heads	Information
1.	Project name and location	Plaza at 106-I", Sector 106, Gurugram
2.	Project area	3.725 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	65 of 2012 dated 21.06.12 valid upto 20.06.2020
5.	Name of licensee	Magic Eye Developers
6.	RERA Registered/ not registered	Registration no. 72 of 2017 dated 21.08.2017 valid upto 31.12.2021
7.	Unit no.	0301, 3rd floor, Tower-A2
8.	Unit measuring	1000 sq. ft.
9.	Provisional allotment of unit	24.07.2012 (page 30 of complaint)
10.	Date of execution of Flat Buyers Agreement	20.12.2013 (page 32 of complaint)
11.	Payment plan	Construction linked payment plan
12.	Total Sale consideration	Rs. 61,10,932/-



		(as per customer ledger dated 16.12.2020 on page 31 of the reply)
13.	Total amount paid by the complainant	Rs. 52,85,184/- (as per customer ledger dated 16.12.2020 on page 31 of the reply)
14.	Due date of delivery of possession	20.06.2017 <i>as per clause 9.1 with a period of 3 years from the date of execution of agreement along with 2 grace period of 6 months each</i> <i>(But only one grace period i.e. 6 months has been counted, as precedent set by the authority)</i>
15.	Amalgamation on dated	04.11.2014 (amalgamation of spire developers pvt. Ltd. with magic eye developers pvt. Ltd. vide Honble High Court of Delhi order dated 21.07.2014, page 56 of complaint)
16.	Offer of possession	30.11.2019 (page 73 of complaint)
17.	OC received on	OC received dated 28.11.2019 for tower A, B and C
18.	Delay in handing over possession till offer of possession	2 years 9 months 10 days

3. As per clause 9.1 of the Agreement dated 20.12.2013 the possession was to be delivered within a period of 3 years from the date of execution of this agreement with two grace period of six months each, but only one grace period i.e. 6 months has



been counted, as set by the authority which comes out to be 20.06.2017. Clause 9.1 of the Buyers Agreement is reproduced below:

9.1 SCHEDULE FOR POSSESSION OF THE SAID UNIT

The Developer based on its present plans and estimates and subject to all just exceptions/force majeure/statutory prohibitions/courts order etc., contemplates to complete the construction of the said Building/Said Unit within a period of three years from the date of execution of this Agreement, with two grace period of six months each, unless there is a delay for reasons mentioned in Clause 10.1,10.2 and clause 37 or due to failure of Allottee (s) to pay in time the price of the said unit along with other charges and dues in accordance with the schedule of payments.....

4. The complainant submitted that Spire Developers Pvt. Ltd. had launched a project known as Spire Condominiums at Sector-106, Gurugram. The project was changed to "The Plaza at 106" and Spire Developers amalgamated with current respondent and the respondent took sole responsibility of the project. That the respondent issued a Provisional Allotment letter dated 24.07.2012 whereby the Flat No. 0301at 3rd floor was allotted to the complainant in the residential project namely "Spire Condominiums. On 20.12.2013, a Buyer Agreement was



executed between respondent and complainant the project was changed to "The Plaza at 106" from "Spire Condomiums.

5. The complainant submitted that the respondent sent a letter dated 04.11.2014 informing the Amalgamation of Spire Developers Pvt. Ltd. with Magic Eye Developers Pvt. Ltd. vide Hon'ble High Court of Delhi order 21.07.2014. That the respondent sent a demand letter dated 18.09.2015 to the complainant and asked to pay the next instalments of Rs. 4,50,091/- by 17.10.2015. The demand of the said instalment was supposed to be made after the Completion of Internal Flooring. However, prior to paying the demanded instalment, the complainant visited the project site to get the status update and found that the construction was not as per the scheduled and the internal flooring of the unit was not completed. Thereafter, the complainant wrote a letter dated 28.09.2015 to the respondent and informed that the demand Rs. 4,50,091/- raised by them is not justified as the flooring is not completed and such demand was to be made only after the completion of internal flooring and not prior to completion of such task. Further, the complainant asked the respondent to let him know the expected time of completion of project. The complainant also sent emails regarding the same on 09.10.2015.



6. The complainant further submitted that in November 2017, the complainant visited the project site and found that the construction at the project is stalled and there is hardly any development and the status is almost similar as it was in 2015. There was no construction activity in the Tower A2. The respondent sent a demand letter dated 02.11.2018 and raised a further demand of Rs. 3,75,140/-. However, prior to payment, the complainant visited the site again in November 2018 and was surprised to see that the status of the project was exactly same as it was during his last visit in November 2017. The construction was as stand still. The complainant sent an email to the respondent with regard to the same. That after a delay of almost four years, the respondent sent an letter of offer of possession dated 30.11.2019.
7. The complainant submitted that upon receiving the possession letter, the complainant visited the site on 10.01.2020 to check if the unit is actually ready and habitable. The complainant found that the unit is incomplete, unfit and inhabitable and there were several violation of terms of agreement. The unit was not fit for following reasons:-
- i. Electrical – Fitment of ACs in bedroom not done. Most Switches had no cover at all;



- ii. Flooring – Wooden laminated flooring was not done in the bedroom as per the specification promised in the agreement;
 - iii. Kitchen -- Modular kitchen with marble counter stainless sink with CP fittings were not done;
 - iv. Toilets CP fittings for geysers were not done;
 - v. Seepage in walls, oil distemper painting incomplete;
 - vi. Only 1 out of 4 proposed lifts were functional in Tower A.
8. Further, the apartment booked by the complainant was a service apartment and the adjacent commercial complex was very important for the habitability of the apartment. The commercial complex is still at various stages of development. Therefore, the possession of the apartment cannot be handed over in isolation of all other facilities/amenities of the complex which are still to be completed. The complainant found that the commercial complex is not complete, the swimming is not complete. Hence, this complaint inter-alia for the following reliefs:
- i. To pay delay possession charges at the prescribed rate of interest.
9. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to



have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

10. The respondent contested the complaint on following grounds:-

- i. The respondent submitted that the instant complaint is neither maintainable in law nor on facts. Instant complaint is without cause of action and has been filed with malafide. Therefore, instant complaint is not maintainable and is liable to be rejected.
- ii. After obtaining the aforesaid Occupation Certificate, Respondent has already offered possession of Units to its respective allottees including the Complainant on 30.11.2019.
- iii. It is submitted that the Complainant has send request for the refund of his amount and in pursuance of which the respondent has apprised them about the present situation with regarding to the construction status through email dated 23.11.2018 and also invited the complainant to its office for clarifications of any doubts regarding the project in question but to the utter shock of the respondent whereafter complainant also filed a Complaint before this Hon'ble Authority vide CC No.2309/ 2018 for Refund of the amounts paid by him till date alongwith interest. Complainant during the



hearing on 08.10.2020 before the Hon'ble Adjudicating officer stated that he is interested to take possession of the Unit and thereby the Complaint stood dismissed as withdrawn.

- iv. That after the intimation letter dated 30.11.2019, Respondent vide letter dated 20.12.2019 intimated to the complainant that in terms of the Agreement principal amount of Rs. 8,02,148/- is due and payable by them at the stage of offer of possession after adjustment of a rebate of Rs. 166,192/- in terms of clause 10.4 of Agreement dated 20.02.2013.
- v. That the Complainant has till date made a payment of Rs.52,83,985/- in respect of the aforesaid Unit which is inclusive of the rebate amount of Rs.1,66,192/- granted as compensation in terms of clause 10.4 of the Agreement. It is submitted that it is the Complainant himself who is in default and despite making the statement before the Hon'ble Adjudicating Officer that he is interested in taking over possession has failed to clear the balance consideration and to take over possession of the Unit till date on one pretext or the other.
- vi. In view of the foregoing facts and circumstances, it is most respectfully prayed that this Ld. Authority may most graciously be pleased to dismiss the present complaint with costs in favour of the Respondent.



11. Arguments heard.
12. 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.
13. The Authority, on the basis of information, explanation, other submissions made and the documents filed by both the parties, is of considered view that there is no need of further hearing in the complaint.
14. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue, clause 9.1 of Flat Buyer Agreement executed between the parties on 20.12.2013, possession of the booked unit was to be delivered within a period of 3 years from the date of execution of this agreement with two grace period of six months each from the date of buyer's agreement. Only one grace period i.e. 6 months has been counted for the calculation of due date of possession, so the due date of possession comes out to be 20.06.2017.

As per annexure R7 and R8 the respondent has already paid an amount of Rs. 1,66192/-. Therefore, the amount of compensation already paid to the complainant by the respondent as delay compensation as per the buyers



agreement shall be adjusted towards prescribed interest to be paid by the respondent as per the provisions of the Act. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondent is established. As such complainant is entitled to delay possession charges at the prescribed rate of interest i.e. @ 9.30% p.a. w.e.f. due date of possession i.e. 20.06.2017 till handing over of possession i.e. 30.11.2019 as per the provision of section 18(1)(a) of the Act read with rules 15 of the Rules.

15. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- (i) The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay on the amount paid by the complainant from due date of possession i.e. 20.02.2017 till the handing over of possession i.e. 30.11.2019. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
- (ii) The amount of compensation already paid to the complainant by the respondent i.e. Rs. 1,66,192/- shall be adjusted towards the delay possession charges to be paid by the respondent as per the provisions of the Act.



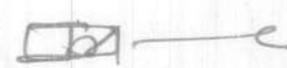
- (iii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- (iv) Interest on the delay payment from the complainant shall be adjusted at the prescribed rate of interest i.e. @ 9.30% by the promoter where is the same as is delay granted to the complainant in case of delayed possession charges.
16. Complaint stands disposed of.
17. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.02.2021


(Dr. K.K. Khandelwal)

Chairman

Judgement Uploaded on 09-04-2021