

**BEFORE RAJENDER KUMAR, ADJUDICATING
OFFICER,
HARYANA REAL ESTATE REGULATORY
AUTHORITY GURUGRAM**

Complaint no. : 779 of 2019

Date of decision : 20.08.2021

J.M. CHHABRA
R/O : 1184/1, 1st Floor,
Arjun Nagar, Kotla
Mubarkpur, New Delhi-110003

Complainant

Versus

M/S MAGIC EYE DEVELOPERS.
ADDRESS: GF-09, Plaza M-6
District Centre, Jasola
New Delhi-110025

Respondent

APPEARANCE:

For Complainant:

In person

For Respondents:

Mr. Anoop Gupta (Adv)

Ms Neelam Gupta (Adv)

ORDER

1. Present compliant is filed by Sh. J M Chhabra (also called as buyer) 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) against respondent/promoter.
2. As per complainant, on 30.10.2012 he booked a retail shop in project "**The Plaza**", situated at sector-106, Gurugram. He made payment of Rs 2,00,000 as booking amount. The respondent issued an allotment letter dated 07.01.2013 and allotted a unit admeasuring 518 sq. ft. for a total consideration of Rs 53,69,588 including BSP, EDC, IDC etc. A buyer's agreement was executed on 26.03.2013.
3. The project "The Plaza" was initially owned by Spire developers private limited. The said company got amalgamated with respondent company Magic Eye developers limited and with effect from 21.07.2014 all the rights and liabilities were transferred to respondent company. The intimation with respect to amalgamation was given to complainant vide letter dated 04.11.2014.
4. As per the Clause 9.1 of buyer's agreement, the possession of the unit was proposed to be delivered by the developer to the allottee within 3 years from the date of execution of buyer's agreement, with two grace periods of 6 months

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each. In this way the possession ought to have been delivered by 26.09.2016 but respondent failed to complete the construction work and consequently failed to deliver the same till date.

5. As per the payment plan opted by the complainant, he made timely payment of Rs 51,74,218 i.e. 96 % of entire agreed consideration, along with miscellaneous and additional charges etc, but to the utter dismay of complainants the possession of the apartment has not been delivered in finished manner as agreed in buyer's agreement.
6. As respondent failed to deliver the possession of the unit, the complainant exercised his right under clause 10.3 of the buyer's agreement and requested respondent to refund the total cost of the unit with interest at rate of 9 % vide his notice dated 19.06.2017. The respondent vide reply (of notice) dated 31.08.2017 refused to refund the total cost of the unit.
7. The respondent has committed gross violation of the provisions of section 18(1) of the Act by not handing over the timely possession of the flat in question. In this way complainant is forced to file present compliant, seeking refund of entire amount of Rs 51,74,218/- along

with simple interest at 18 % p.a. or compound interest at 9 %.

8. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" THE PLAZA", Sector 106, Gurugram, Haryana
2.	Project area	3.75 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	65 of 2012 dated 21.06.12 valid up to 20.06.2020
5.	Name of licensee	Magic Eye Developers
6.	RERA Registration	Registration No. 72 of 2017 dated 21.08.2017
UNIT DETAILS		
1.	Unit no.	Shop No. 21, Ground floor
2.	Unit measuring	518 sq. ft.
3.	Date of Booking	30.10.2012
4.	Date of Provisional Allotment	07.01.2013
5.	Date of Buyer's Agreement	26.03.2013
6.	Due Date of Delivery of Possession As per Clause No. 9.1: The possession of the said	26.03.2017

	premises is proposed to be delivered within 3 years from the date of execution of buyer's agreement with two grace period of 6 months each.	
7.	Delay in handing over of possession till date	4 years 05 months
PAYMENT DETAILS		
8.	Total sale consideration	Rs 53,69,588/-
9.	Amount paid by the complainant	Rs 51,74,218/-
10	Payment Plan	Construction Linked payment plan

9. The respondent contested the claim by filing a reply dated 04.04.2019. It is contended that the delay in possession is not due to any act of omission or commission on part of respondent. Various allottees failed to make payments of instalments as per the construction linked schedule, all this affected the progress of the construction.

10. It is further averred that the liability to pay interest by the promoter to allottee under The Real Estate (Regulation and Development) Act, 2016 is a penal liability which cannot be enforced retrospectively. The



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project is ongoing project and as per declaration given by respondent the date of completion of project is 31.12.2021 and allottees are entitled to claim possession only as per the said declaration. The complainant had sent a notice in the year 2017 and respondent had duly replied to the said notice. The complainant after being satisfied with the response of respondent had made the payments of instalments thereafter and last instalment was paid on 23.04.2018. It (respondent) is committed to complete the project. As per the Local Commissioner report dated 26.07.2019 which was submitted in the matter of Shelly Jain v Magic Eye Developers Pvt. Ltd, (Compliant No. 874/2019) the project is 90-95 % complete.(Annexure C of additional documents placed by respondent).

11. According to respondent, if the relief of refund is granted to the complainant, then it would hamper the progress of the project, which is near completion. Contending all this, respondent prayed for dismissal of compliant.
12. It is not in dispute that complainant booked and allotted a unit in project 'The Plaza' being developed by Spire Developers Pvt. Ltd, the latter was amalgamated with the respondent with all rights and liabilities of aforesaid project. The respondent does not deny that complainant

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paid Rs 51,74,218 out of total consideration of Rs 53,69,588 by paying timely instalments as demanded by respondent and again that it was construction linked plan. It is also not in dispute that the project could not be completed within promised time. Only plea raised by respondent is that as various buyers did not pay their dues in time, it hampered and delayed the construction work and again that it was an ongoing project same i.e. respondent issued a declaration, stating date of completion as 31.12.2021, allottees can claim possession as per said declaration.

13. There is no substance in the above stated plea of respondent. There was no term of contract between complainant and respondent, authorising the latter to delay project, in case other buyers fail to clear their dues. Even if respondent unilaterally issued any declaration revising the date of possession, it is not binding upon complainants unless same was agreed by him (complainant). When complainant made payments as per stages of construction and demands by the developer i.e. respondent, same (complainant) had every right to get possession of his unit in agreed time frame. The respondent failed to deliver his promise and hence duty bound to refund the entire amount along

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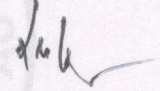
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with interest etc, if demanded by the complainant. Even if it was an ongoing project, developer/respondent cannot escape his liabilities imposed by the Act.

14. Complaint in hands is thus allowed and respondent is directed to refund entire amount received from complainant within 90 days from today, with interest @ 9.3 % p.a. A cost of Rs 1 lac is also imposed upon respondent to be paid to complainant.

20.08.2021



(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

HARERA
GURUGRAM