

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

**Complaint no.** : 804 of 2021  
**First date of hearing** : 31.03.2021  
**Date of decision** : 25.08.2021

Chetna Lodha

**Address:-** E 72, Second floor, Bangoly Colony,  
Mahavir Enclave near Sulabh Public School,  
New Delhi-110045

**Complainant**

**Versus**

Magic Eye Developers Private Limited  
**Office address:-** G.F. - 09, Plaza, M - 6,  
District Centre, Jasola, New Delhi - 110025

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Vijay Kumar Goyal

**Member**  
**Member**

**APPEARANCE:**

Shri Devender Lodha  
Ms. Neelam Gupta

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 15.02.2021 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 allottees 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, 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	The Plaza at 106, Sector-106, Gurgaon
2.	Project area	3.725 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no. and validity status	65 of 2012 dated 21.06.2012 valid upto 21.06.2022
5.	Name of licensee	Magic Eye Developers
6.	RERA Registered/ not registered	Registered No. 72 of 2017 dated 21.08.2017 valid upto 31.12.2021
7.	Unit no.	0508,5 <sup>th</sup> floor, Tower-B1
8.	Unit measuring	700 sq. ft.
9.	Date of execution of Buyers Agreement	18.02.2020 (Page 24 of the complaint)
10.	Payment plan	Down Payment plan (Page 44 of the reply)
11.	Total Sale consideration	Rs. 41,50,600/-



		(As per statement of account dated 12.03.2021 on page 46 of the reply)
12.	Total amount paid by the complainant	Rs. 40,11,000/- (As per statement of account dated 12.03.2021 on page 46 of the reply)
13.	Due date of delivery of possession as per clause 7.1 as construction of unit is complete allottee may take ownership possession of unit immediately on making payment of complete consideration to promoter.	18.08.2020 <b>Note:-</b> [Grace period of 6 month is allowed due to covid-19]
14.	Offer of possession	07.10.2020 (Page 50 of the complaint)
15.	Delay in handing over possession till 07.12.2020 i.e. date of offer of possession (07.10.2020) plus 2 months	2 months 19 days
16.	Occupation Certificate received on	28.11.2019 for block A, B & C

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:

- i. That the complainant submitted that to earn good return on her investment, she started to search a ready to move commercial property through her husband Sh. Devendra Kumar Lodha so that they can earn handsome return and further to avoid any mediator/dealer commission they tried to contact to builder directly and in this process they have contacted to Mr. Anish Khanna at the builder office and it is pertinent to mention here that they have already



told to him that they want to buy office unit directly from builder and he confirmed that he is from the respondent company having designation as sales manager. Mr. Anish Khanna got together with the company's staff and created such an atmosphere that we believed that he is the company's sales manager. Due to this we were forced to trust on him and done the deal through him on 31.08.19 by online transfer of Rs. 2,11,000/- in the bank account of respondent and he committed to handover the buyer builder agreement within a week.

- ii. That on 16.09.2019, Mr. Anish Khanna requested through WhatsApp message to the complainant's husband to transfer Rs. 12000/- in his personal account as he was in personal need, and they had to accept his request because they knew that they would have to complete the said deal and also get a buyer builder agreement through him. Thus, they trusted on him being an employee of builder's and complainant transferred the said amount through NEFT in his personal account.
- iii. That on 18.09.2019 Mr. Anish Khanna confirmed that he got the approval of GST and further confirmed to provide some more discount in office unit. It is pertinent to mention here that we further demanded to transfer Rs 15000/- as he could not be able to use his untouched bank account balance of Rs 1,93,579 and as a confirmation of his statement he sent to complainant's husband a screen shot of his bank account balance through WhatsApp



massage and they had to accept his request because they knew that they would have to complete the said deal through him and also get a buyer builder agreement through him.

- iv. That further Mr. Anish Khanna told that in his company an offer will come out on Navratri festival, to take advantage of this, he will get our office unit also made include, but he will have to give some time. That on 14.11.2019 the complainant has received a massage from Mr. Anish Khanna that he has left the job from Orion. That after receipt of said massage, complainant's husband called to Mr. Anish Khanna and further made inquiry from the office of respondent and all the stories came to in front of complainant that Mr. Anish Khanna was the employee in dealer company namely M/s Orion Infra realtors Private Limited and to get the commission on the deal from the respondent, Mr. Anish Khanna has played all game with the help of the builder company staff.
- v. Further the complainant met with director of M/s Orion Infra realtors Private Limited namely Mr. Rajat and he further confirmed that his company is big channel partner of the builder and Mr. Anish was his employee, but he has been fired and further arrange joint meeting with Mr. Kuldip Singh who is the Sales Manager of the builder and provided the receipt of the booking of unit no B1-508 on photocopy of the agreement on 01.12.2019. That the respondent has further demanded Rs. 5.00 lacs to provide



the written confirmation of booking and after taking commitment of complainant that she will further transfer Rs. 5.00 lacs within time of 7 days, the respondent has provided written confirmation on application. That the respondent has further confirmed during the meeting that they will adjust the amount of Rs. 27,000/- from the pay out of his channel partner and thus the complainant has made further RTGS of Rs. 5.00 lacs on 04.12.2019.

- vi. That due to non-receipt of any positive response, the complainant has made another deal for another unit no. B2-808 from the market and paid entire amount in January 2020 and further requested to builder vide letter dated 01.02.2020 to handover the possession of the unit no B2-808 as well as also requested to provide the written agreement for unit no. B1-508. The builder has committed to handover the possession of the B2-808 with in Fifteen days from 01.02.2020 and also committed to provide the builder buyer agreement for unit no B1-508. That the complainant has received duly signed BBA dated 18.02.2020 for unit no. B1-508 on or after 20.02.2020. That the complainant has further made follow up for handover another unit no B2-808 for which they have made complete payment with advance maintenance charges till 31<sup>st</sup> March 2020. However, builder has not replied for possession of unit no. B2-808 but charged some interest on delay in making payment of unit no. B1-508.



- vii. That the respondent has further committed to handover the possession of the one unit no B2-808 on or before 15.03.2020 if the complainant paid Rs. 3.00 lacs on or before 10.03.2020 on account of unit no B1-508 and further the complainant has paid Rs 3.00 lacs on 09.03.2020 and Mr. Kuldip has committed to possession of the unit no B2-808 on or before 15.03.2020. However, the respondent failed to provide the possession of the unit B2-808 till 31.03.2020.
- viii. That Mr. Kuldip on the behalf on the respondent further committed to handover the both the unit no b2-808 and b1-508 on or before 07 May 2020 with a waiver of interest if any as well as common maintenance charges for next six month if complainant paid Rs. 20.00 lacs on or before 15.04.2020. The complainant has made immediate RTGS of Rs. 10.00 lacs on 31.03.2020 and rest of Rs. 10.00 lacs on 15.04.2020. That after receipt of all payment Mr. Kuldip has provided contact no of Mr Mohit to further follow up thus it can see from the act of Mr Kuldip that he left from the story after collecting all payment and thus respondent never bother for handover the physical possession of unit.
- ix. That the complainant has made various request mail for possession of the both unit no B1-508 and B2-808 but the respondent has never replied for physical possession and ultimately the complainant was called to complete the documentary formalities to handover the physical



possession of one unit no B2-808 on 27.08.2020 and took the signature on possession document before the physical possession, However it is pertinent to mention here that when the complainant visited the unit no B2-808 and complainant has observed some issue in Paint and cleaning and thus handed over the key of the said unit no B2-808 to Mr Mohit who has taken the sign on possession related documents at the Plaza office at Sector 106.

- x. That the complainant further made lot of follow up for handover the both unit no B2-808 and B1-508 and ultimately received the possession of both unit on 07.10.2020. That the complainant has made further reminder mail dated 09<sup>th</sup> October 2020 to resolve all issue and received reply from the respondent vide mail dated 13.10.2020. That due to lot of delay in possession of both unit and to get the compensate of interest on invested money in both units, the complainant has made lot of requests to appoint an Arbitrator vide mail dated 16.10.2020, 19.10.2020 and 20.10.2020 but the respondent further failed to appoint arbitrator.

**C. Relief sought by the complainant:**

4. The complainant has filed the present compliant for seeking following relief:
- (i) Direct the respondent to pay delayed possession charges at the prescribed interest rate i.e 10.75% for every month





of delay from the due date of possession till the handing over the possession, on paid amount.

- (ii) Direct to waiver of CAM charges till 31<sup>st</sup> March 2021 as the builder is committed to waive off common maintenance charges for six months after possession of the units and also not started to provide the facility as committed in buyer builder agreement till now.
  - (iii) Direct to the respondent to provide for third party audit to ascertain/measure accurate common area maintenance charges per sq. ft.
5. On the date of hearing, the authority explained to the respondents/promoters 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.

**D. Reply by the respondent**

6. The respondent has contested the complaint on the following grounds.
- i. That the instant complaint is liable to be dismissed as not maintainable in as much as, entitlement of possession is subject to making the complete payment of sale consideration by the complainant which admittedly, complainant has failed to pay till date to respondent. It is submitted that an amount of Rs.1,39,000/- is still outstanding and payable by the complainant along with interest, which is accruing on day-to-day basis, in respect



of the unit in question. That the respondent completed the construction of its commercial project 'Plaza at 106-1', situated at sector-106, Gurugram and obtained occupation certificate in respect of the same from Director General Town and Country Planning, Chandigarh vide Memo bearing no. ZP-833/AD/(RA)/2019/29244 dated 28.11.2019.

- ii. That the complainant after satisfying herself with the location, ambience and quality of the construction carried out by the respondent, submitted the duly filled application Form dated 01.12.2019 for allotment of unit measuring 700 sq. ft in super area bearing No. B1-508 in tower B1 in the aforesaid developed project of the respondent and opted for 'Down Payment Plan (10% discount)'. That vide letter dated 24.12.2019 respondent called upon the complainant that an amount of Rs. 29,20,180/- is due and payable by the complainant on or before 23.01.2020 in terms of the payment plan opted vide the application form. That the complainant has paid a sum of Rs. 40,11,000/- till date to respondent in respect of the said unit and an amount of Rs.1,39,600/- is still due and payable by the complainant along with the interest in delay in making payment of the installments as per the agreed payment plan which is accruing on day-to-day basis. Last payment was made by complainant on 15.04.2020.
- iii. That complainant vide clause 5 of the agreement agreed to make timely payment of instalments and other dues payable



by her as per payment plan and thereby, herself is in breach of clause 5 of the agreement. That it was further agreed vide clause 7 of the agreement that date mentioned at serial no. 27A in schedule A of the agreement i.e., 25.01.2020 shall be deemed to be the date of 'offer of possession of unit'. Serial no.27 A of the schedule A that "*Possession of Unit will be handed over by Promoter to Allottee only on payment of complete Total Sale Consideration by Allottee to Promoter*". That despite dues of Rs.1,39,000/- alongwith accrued interest was pending payable by the complainant and the unusual circumstances that prevailed due to outbreak of COVID-19 pandemic and which period of 9 months w.e.f. 24.03.2020 was declared by the Govt. as force majeure period, possession of said unit was handed over to complainant on 07.10.2020 with the understanding that the balance payment will be made by him within next 2 weeks of taking the possession. This has been done in complete trust with due regard to the long-term relationship with complainant, as an esteemed customer. But complainant has however breached the trust confided in him by the respondent and has till date failed to make the complete payment of the said Unit.

- iv. That the respondent vide email dated 13.10.2020 again reminded to make the payment of balance sale consideration of Rs.1,39,000/-for full and final settlement but complainant has failed to make complete payment of sale consideration till



date. That Maintenance Agreement in respect of the said unit was also executed between the complainant and Prop bridge Services private limited (i.e., Maintenance Agency nominated by respondent to provide common area maintenance services in the project) on 16.11.2020. Vide clause 6.1 of the said Maintenance Agreement complainant agreed to make the payment of maintenance charges @ Rs.7/- per sq. ft. of super area w.e.f. the date of offer of possession or the 01.04.2020 whichever is later and hence, is liable to make the payment, accordingly.

- v. It is submitted complainant being in default in complying with the pre-condition of approval granted on 31.03.2020 is not entitled to any waiver either for interest accrued upon her for delay in making the payments or for CAM Charges as alleged. On the contrary, complainant is liable to make the balance payment along with interest and holding charges in terms of section 19(7) of the Act of 2016 on the defaulted amount for the period of delay and cannot be allowed to wriggle out of the contractual commitments.
7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of theses undisputed documents.

**E. Jurisdiction of the authority**

8. The authority observed 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, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose 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 completed territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act and duties of allottee as per section 19(6),(7) and(10) leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**F. Findings on the relief sought by the complainant**

**9. Relief sought by the complainant:**

- (iv) Direct the respondent to pay delayed possession charges at the prescribed interest rate i.e 10.75% for every month



of delay from the due date of possession till the handing over the possession, on paid amount.

(v) Direct to waiver of CAM charges till 31<sup>st</sup> March 2021 as the builder is committed to waive off common maintenance charges for six months after possession of the units and also not started to provide the facility as committed in buyer builder agreement till now.

(vi) Direct to the respondent to provide for third party audit to ascertain/measure accurate common area maintenance charges per sq. ft.

10. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***"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, —*

*.....  
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."*

11. Clause 7.1 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

**"7 POSSESSION OF THE UNIT**



**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 purpose 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 allottee.*

**12. Admissibility of grace period:** As a matter of fact, the promoter has given the valid reason for delay to complete the project within the time limit prescribed by the promoter in the apartment buyer's agreement. Accordingly, this grace period of six months is allowed due to Covid-19 and as such the due date of possession comes out to be 18.08.2020 to the promoter at this stage.

**13. Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 10.75% p.a. however, proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed 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., 25.08.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
16. **Rate of interest equally chargeable to the allottee in case of default in payment:-** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*





*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

17. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

18. On consideration of the documents available on record and submissions made by both the parties it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 18.02.2020 to hand over the possession within the stipulated period. Grace period of six month is allowed due to covid-19 and as such the due date of possession comes out to be 18.08.2020. Accordingly, the 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. In the present case, the complainant was offered possession by the respondent on 07.10.2020 after receipt of occupation certificate dated 28.11.2019. The authority is of



the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the addendum agreement dated 19.02.2020 executed between the parties.

19. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 28.11.2019. However, the respondent offered the possession of the unit on 07.10.2020, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, they should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e.



18.08.2020 till the expiry of 2 months from the date of offer of possession (07.10.2020) which comes out to be 07.12.2020.

20. Accordingly, the 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, the complainant is entitled to delay possession charges at prescribed rate of the interest @ 9.30% p.a. w.e.f. 18.08.2020 till 07.12.2020 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

**G. Directions of the authority**

21. 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 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 complainants from the due date of possession i.e., 18.08.2020 till 07.12.2020 i.e. expiry of 2 months from the date of offer of possession (07.10.2020). The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.

- ii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iii. The respondent shall not charge anything from the complainants which is not the part of the agreement, however, holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3889/2020 decided on 14.12.2020.
22. Complaint stands disposed of.
23. File be consigned to registry.

  
(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.08.2021

  
(Vijay Kumar Goyal)

Member

Judgement uploaded on 30.11.2021.