

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 31.01.2019
Complaint No.	1339/2018 Case Titled As Rajneesh Arora V/S M/S Magic Eye Developers Pvt. Ltd
Complainant	Rajneesh Arora
Represented through	Complainant in person with Shri Aditya Bhardwaj, Advocate
Respondent	M/S Magic Eye Developers Pvt. Ltd
Respondent Represented through	None for the respondent
Last date of hearing	First hearing
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority.

Arguments heard.

As per clause 9.1 of the Builder Buyer Agreement dated 24.5.2013 for unit No.0901, 19th floor, tower-B2, in project "Plaza at 106-1" Sector-106 Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of execution of BBA + 3 months grace period which comes out to be 24.8.2016 by allowing only one grace period of 3 months. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.31,15,436/- to the respondent against a total sale consideration of Rs.43,97,700/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e.

10.75% per annum w.e.f 24.8.2016 (by allowing only one grace period of three months) as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.

The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
31.1.2019

Subhash Chander Kush
(Member)

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

Complaint No. : 1339 of 2018
First date of hearing: 31.01.2019
Date of Decision : 31.01.2019

Mr. Rajneesh Arora,
R/o. Villa No. 4494, Achivers Status Enclave,
Kalindi Hills, sector-49, Badkhal Sohna Road,
Faridabad

Complainant

Versus

M/s Magic Eye Developers Private Limited
Regd. Office: GF 09, Plaza M-6, District Centre
Jasola, New Delhi-110025

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Aditya Bhardwaj with Advocate for the complainant
complainant in person
None for the respondent Advocate for the respondent

ORDER

1. A complaint dated 25.10.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Rajneesh Arora, against the promoter M/s. Magic Eye Developers



Private Limited in respect of apartment/unit described below in the project 'Plaza at 106-I', Sector-106, Gurugram on account of violation of the section 11(4)(a) of the Act ibid for not developing the project within stipulated period.

2. Since, the buyer agreement has been executed on 24.05.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Plaza at 106-I", Sector-106, Gurugram
2.	RERA registered/ not registered.	Registered
3.	RERA registration no.	72 of 2017
4.	Revised completion date	31.12.2021
5.	Unit no.	0901,19 th floor, tower B2
6.	Unit area admeasuring	700 sq.ft.
7.	DTCP No.	65 of 2012
8.	Date of buyer agreement	24.05.2013
9.	Total sales consideration as per buyers agreement dated 24.05.2013	Rs. 43,97,700/-
10.	Total amount paid by the complainant till date	Rs. 31,15,436/- As alleged by the complainant
11.	Date of delivery of possession	24.11.2016



	Clause 9.1- 3 years from execution of the agreement plus 3 months grace period	
12.	Penalty clause as per Clause 10.1 of the buyer agreement	Rs. 5/ sq.ft. of the super area of the said unit per month for the entire period of such delay

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. A buyer agreement dated 24.05.2013 is available on record for the aforesaid plot. Therefore, the promoter has not fulfilled his committed liability as on date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The case came up on hearing on 31.01.2019. The reply was filed by the respondent on 15.11.2018 which has been perused by the authority.

Facts of the complaint

6. Briefly stated, the facts of the case of the complaint that complainant is a senior citizen and allottee of the property which is being sold by the respondent. Initially the said property was bought in the name of Mrs. Shuchi Arora who happens to be the daughter of the complainant. Later the said



property was transferred in the name of the complainant through proper documentation executed and approved by respondent being a gift from the daughter to the complainant. Upon transfer all the rights under the agreement passed upon the complainant.

7. In March 2012 the complainant and her daughter were approached by agent of the Promoter. It was informed that respondent is coming up with the project under the name of THE PLAZA AT 106 located in sector 106 Gurugram for construction and development of a commercial colony.
8. The complainant received a letter dated 1.06.2012 whereby the booking of the complainant was confirmed. The complainant received a letter wherein complainant was informed that flat bearing number 0901, Tower B2 Block 02, Floor 9th has been allotted to the complainant.
9. The complainant was called upon to execute buyers agreement pertaining to the property which was booked by the complainant with the respondent. As per clause 9.1 of the said agreement the unit will be delivered within the period of three years from the date of execution of the agreement with extension of 12 months. When the complainant raised the issue that the said term and condition is in contravention of



the terms and conditions stated in the application form the respondent informed that in case further payments were not made the complete money will be were forfeited in accordance with agreement. As a majority of the payment has already been made by the complainant, thus the complainant was left with no other option and decided to go ahead with the project.

10. The complainant received a letter in which it was informed that erstwhile developer i.e Spire Developer Pvt Ltd. has amalgamated with Magic Eye Developers Pvt Ltd. it was further informed that all the communications, payment and queries in future will be addressed to the Magic Eye Developers Pvt Ltd. It was further informed that all the terms and conditions comprised in the builder buyer agreement will be binding on the new entity in all respects.
11. In December 2014, communication was made to the respondent by Ms. Shuchi Arora the then owner of the property where she expressed her desire to transfer the property in name of her father the current complainant herein out of love and affection. Pursuant to same an agreement dated 23 February 2015 was entered between Ms. Shuchi Arora and respondent herein. The said agreement was later followed by another agreement dated 17 March 2015 by virtue of which the transfer was made complete.



12. From time to time various demands were raised by the respondent in the hope that the project will be delivered in the timely manner as committed by the respondent. The payments made from year 2014 time to time has been shown in tabular form:

S.No	Date of Demand	Date of Payment /	Receipt No	Amount
1.	9 April 2015	5 May 2015	2539	Rs.3,54,950.00
2.	25 September 2015	23 October 2015	2868	3,47,423.00
3.	17 September 2015	28 December 2015	3109	Rs.3,47,814.00
4.	December 2015	31 st January 2016	3368	Rs. 428,607.00



13. Issues raised by the complainants are as follow:

- i. Whether the promoter has failed to execute and perform its obligations in terms of the agreement for sale that is buyers agreement?
- ii. Whether the complainant are entitled to interest on the amount deposited by them?
- iii. What should be the rate of interest which the complainant will be entitled in the facts and circumstances of the present case?

14. Relief sought:

The complainant is seeking the following relief:

- i. Direct the respondent to refund the entire principal amount of Rs. 31,15,436/- along with interest 18% from the date of respective deposits.

Respondent's reply

15. The respondent submitted that the complaint is neither maintainable in law nor in facts. The complaint is without cause of action and has been filed with malafide intention to cover up complainant's own default.



16. The respondent submitted that the developer buyer agreement dated 24.05.2013 was initially executed between the respondent and Ms. Shuchi, daughter of the complainant, herein respect of the unit measuring about 700 sq.ft., in super area bearing unit no. 0901 in tower B2 in commercial colony. The complainant opted for making the payments under the construction linked plan. The construction of the project and possession thereof are dependent upon and linked to the payment of instalment on time.

17. The respondent submitted that the agreement executed between the parties especially prior to commencement of Act has to be read and interpreted "as it is" without any external aid including without aid of subsequent enactment especially require its aid to interpret agreements executed prior to commencement of such enactment. Hence rights and liabilities of the parties including the consequence of default of any party have to be governed by buyer's agreement dated 24.05.2013 and not by the Act.

18. The respondent contended that the hon'ble authority does not have judicial or quasi-judicial powers to pass adjudicatory



orders in relation to disputes between an allottee an promoter of an ongoing project on the date of commencement of the Act especially in circumstances when there is no violation of any declaration given by promoter at the time of getting the ongoing project registered with Real Estate Regulatory Authority. The complainant has committed the default in making the payment as per the payment plan agreed by the complainant himself.

19. The respondent submitted that the complainant cannot seek benefit [out of his own default and he must come to the authority with clean hands. The complainant cannot therefore seek handover of possession when he has defaulted in making the payment and accordingly acted as a catalyst in slowing down the pace of construction. The refund will further hamper the completion of the project as the project is almost nearing completion and the respondent assured to complete the construction of the said unit much before the RERA date and expectedly to handover the possession of same by mid of year 2019 or even earlier. The refund of deposited amount will have adverse effect on the other allottees in the said project and thus, the relief sought to be claimed by the complainant is liable to be rejected.



Determination of issues:

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issues wise findings of the authority are as under:

20. With respect to the **first issue** raised by the complainant, the promoters have violated the agreement by not giving the possession on the due date i.e 24.11.2016 as per the agreement, thus, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016.

The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

21. With respect to the **second issue** raised by the complainant, the complainant is entitled to delayed possession charges and refund of the amount will hamper the construction of the project and also the interest of other home buyers.

22. With respect to the **third issue** as the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate, for every month of delay till the handing over of possession.



23. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

34 (f) Function of Authority –

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.

The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

Findings of the authority

24. The respondent admitted the fact that the project Unit at 106 is situated in sector-106, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. As the project in question is situated in planning area of Gurugram, therefore the authority has



complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Arun Kumar Gupta, Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction

25. The objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

26. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority has decided to observe that as per clause 9.1 of the builder buyer agreement dated 24.5.2013 for unit No.0901, 19th floor, tower-B2, in project "Plaza at 106-1" Sector-106 Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of execution of BBA + 3 months grace period which comes out to be 24.8.2016 by allowing only one grace period of 3 months. However, the respondent has not delivered the unit in time.



Complainant has already paid Rs.31,15,436/- to the respondent against a total sale consideration of Rs.43,97,700/-.

Decision and direction of authority

27. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent:

- i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 24.08.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- iii. The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.



28. The complaint is disposed of accordingly.

29. The order is pronounced.

30. Case file be consigned to the registry

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Date: 31.01.2019

Judgement Uploaded on 05.04.2019



HARERA
GURUGRAM

