

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

Complaint no.: 592 of 2022  
Date of first hearing: 21.04.2022  
Date of order: 20.03.2025

Khushi Ram Sharma Through his legal heir  
Yogender Mohan Sharma  
R/o: - H. No.-112, Khatiwas, Tehsil- Charkhi  
Dadri, P.O-Samaspur, District-Bhiwani-  
127306

**Complainant****Versus**

1. M/s KNS Infracon Private Limited,  
2. M/s Tashee Land Developers Pvt. Ltd.  
**Both having Regd. office at:** 517A, Narain  
Manzil, 23, Barakhamba Road, Connaught  
Place, New Delhi-110001

**Respondents****CORAM:**

Shri Vijay Kumar Goyal

**Member****APPEARANCE:**

Shri Abhimanyu Rao (Advocate)

Shri Rishabh Jain (Advocate)

Complainant  
Respondents**ORDER**

1. This complaint 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 thereunder or to the allottee as per the agreement for sale executed *inter se*.

**A. Project and unit related details:**

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

S. No.	Particular	Details
1.	Project name and location	"Capital Gateway", Sector- 111, Gurugram.
2.	Project area	10.462 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid till 15.04.2024
5.	Name of licensee	KNS Infracon Pvt Ltd
6.	RERA Registered/ not registered and registration valid up to	<b>Registered vide no. 12 of 2018 dated 10.01.2018</b> 31.12.2020 for phase-I (tower A to G) and 31.12.2021 for phase-II (tower H to J)
7.	Unit no.	1102, 11 <sup>th</sup> floor, tower G (As per page no. 71 of the complaint)
8.	Unit measuring	1695 sq. ft. (As per page no. 71 of the complaint)
9.	Date of approval of building plans	07.06.2012 (As per information obtained by planning branch)
10.	Date of transfer of rights and interests in favour of complainant	17.08.2015 (As per page no. 62 of the complaint)
11.	Date of allotment in favour of the	17.08.2015 (As per page no. 64 of the



	complainant	complaint)
12.	Date of execution of flat buyer's agreement with the complainant	17.08.2015 (As per page no. 13 of the complaint and page no. 5 of the reply)
13.	Total consideration	Rs.65,50,733/- (As per payment plan on page no. 102 of the complaint)
14.	Total amount paid by the complainant	Rs.66,39,385/- (As per demand note dated 12.01.2021 on page no. 112 of the complaint)
15.	Possession Clause	<b>2. Possession</b> 2.1 subject to clause 9 herein or any other circumstances not anticipated and beyond control of the first party/confirming party and any restraints/ restrictions from any courts/authorities and subject to the purchaser having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement including but not limited timely payment of total sale consideration and stamp duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the first party/confirming party, whether under this agreement or otherwise, from time to time, the first party/confirming party proposes to handover the possession of the flat to the purchaser within approximate period of 48 months from the date of sanction of the building

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		<p><i>plans and other necessary government approvals thereon, of the said colony. The purchaser agrees and understands that the first party/confirming party shall be entitled to a grace period of 180 (One hundred and Eighty) days, after the expiry of 48 months, for applying and obtaining the occupation certificate in respect of the colony from the concerned authority.</i></p> <p><i>(As per page no. 78 of the complaint)</i></p>
16.	Due date of possession	<p>07.12.2016</p> <p>(Note: Due date to be calculated 48 months from the date of sanction of the building plans i.e., 07.06.2012 plus grace period of 180 days)</p> <p>(Grace period is allowed in view of the order dated 08.05.2023 by Hon'ble Appellate Tribunal in Appeal No. 433 of 2022)</p>
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

### B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
  - I. That the complainant Mr. Khushi Ram Sharma is a resident of H no. 112 village- Khatiwas, Teh- Charkhi Dadri, PO- Samspur, District- Bhiwani, Haryana.
  - II. That the project in question is known as "CAPITAL GATEWAY" at Sector 111, Gurugram, Haryana which is a residential project,

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having DTCP licence no. 34 of 2011 dated 16.04.2011 and having RERA registration no. 12 of 2018 dated 10.01.2018.

- III. That unit in question is a 3BHK having unit no. 1102, 11<sup>th</sup> floor in Tower- G, having a super area of 1695 Sq. ft. in the project.
- IV. That as per the record available the first time the said unit was bought by Mr. Sanjeev Kumar Bhatnagar by paying the sum amount of Rs.2,16,975/- on 07.06.2011 through cheques.
- V. That on 29.06.2011, respondent no. 2 issued a letter of transfer of rights and interest of the said unit from Mr. Sanjeev Kumar Bhatnagar to Mr. Tarun Sharma. The said letter also acknowledges the transfer of paid amount towards instalments (till date of transfer) amounting to a sum of Rs.13,25,718/- in favour of Mr. Tarun Sharma.
- VI. That on 01.07.2012, respondent no. 2 issued a letter of allotment of the said unit to Mr. Tarun Sharma. That the first time ever the said unit was allotted and conveyed by the respondent.
- VII. That on 12.03.2013, a pre-printed, one-sided builder buyer's agreement was executed between the respondents and Mr. Tarun sharma.
- VIII. That as per clause 2.1 of the previous builder buyer's agreement executed on 12.03.2013, the respondent had to complete the construction of the unit and hand over the possession within 36 months from the date of sanction of the building plans and other government necessary approvals. Therefore, the due date of possession comes on or before 12.03.2016.
- IX. That on 17.08.2015, respondent no. 2 issued a letter of transfer of rights and interest of the said unit from Mr. Tarun Sharma to the Mr. Khushi Ram Sharma i.e., the present complainant. The

said letter also acknowledges the transfer of paid up amount towards instalments (till date of transfer) amounting to a sum of Rs.21,67,157/- in favour of the complainant. On 17.08.2015, respondent no. 2 issued a letter of allotment of the said unit to the present complainant.

- X. That the respondent no. 2 did not endorse the previous builder buyer's agreement but forced the complainant to enter into a new agreement with the respondents, alleging that it is the only way possible. Therefore on 17.08.2015, a new pre-printed, one-sided builder buyer's agreement was executed between the respondents and the present complainant. The total sale consideration of the unit is Rs.65,50,730/- as per "Annexure D" of the buyer's agreement dated 17.08.2015.
- XI. That as per clause 2.1 of the buyer's agreement dated 17.08.2015 executed between the respondents and the present complainant, the respondent had to complete the construction of the unit and hand over the possession within 48 months from the date of sanction of the building plans and other government necessary approvals. Therefore, the due date of possession becomes on or before 17.08.2019.
- XII. That as per buyer's agreement dated 12.03.2013, the possession clause timeline was only 36 month whereas the date of possession comes out to be on or before 12.03.2016, but the respondents manipulated and forced the present complainant to enter into a new BBA on 17.08.2015 in which the possession timeline was 48 months, whereby the date of possession comes out to be on or before 17.08.2019, which results in a loss of 41 months for the present complainant.



- XIII. That it is prudent to know that Section 62 of the Indian Contract Act 1872 deals with the doctrine of novation. The expression "Novation" means substitution of a new contract in the place of an existing contract. With the creation of the new contract, the existing contract stands extinguished /terminated.
- XIV. That novation means substitution of an existing contract with a new one. When, by an agreement between the parties to a contract, a new contract replaces an existing one, the already existing contract is thereby discharged, and in its place, the obligation of the parties in respect of the new contract comes into existence.
- XV. That it takes place with the consent and agreement of both the parties to a contract thus with the creation of new contractual obligations, the old ones are discharged. The doctrine of novation exists to give expression to the concept that parties to a contract should be competent to add, subtract or vary the terms of the contract before its breach with the help of a new contract.
- XVI. That the main question arises in the complaint is that the act of the company on 17.08.2015 to sign a new builder buyer's agreement for effecting change in unit is a
- novation of contract? or
  - an alteration of contract?
- XVII. That the only change in old and new builder buyer's agreement is just the possession clause and nothing else. The complainant hereby submits that the furnishing of the second builder buyer's agreement on 17.08.2015 was not a novation of the agreement but an alteration of the agreement so the date of possession should be counted as 13.03.2016.

- XVIII. That on 26.02.2019, respondent no. 2 issued a letter to the present complainant informing him about the application of occupancy certificate made to DTCP on 25.02.2019.
- XIX. That on 24.11.2021, respondent no. 2 issued a letter to the present complainant informing him about the sanction of Rs.108 crores from SBI Cap Ltd. SWAMIH Investment Fund for the capital requirement of the project. But on 18.01.2022 respondent no. 2 issued the clarification for the incorrect statements/ misinformation relevant to the previous letter about the sanctioned capital amount.
- XX. That on the demand of the respondents till date the amount of Rs.64,89,385/- has already been paid to the respondents, which is 99% of payable amount as per the new BBA.
- XXI. That on 12.01.2021, the present complainant received an account statement from the respondent whereas it was highlighted that company has received a total sum amount of Rs.57,70,586/- till date. The respondent has not provided the detailed statement of account till date so the contention of actual payment is still pending between the same. In this statement, the respondent has charged an interest of Rs.22,28,551/- from the complainant and that too at exorbitant rates, without giving any explanation or details of the charging of the interest. The respondents demanded an amount of Rs.23,89,038/- from the complainant vide letter dated 12.01.2021.
- XXII. That the complainant had purchased the residential unit with the intention that after purchase, his family will use the said unit for their personal use. The facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency



of service on part of the respondents and as such, they are liable to be punished and compensate the complainant.

XXIII. That due to the above acts of the respondents and of the terms and conditions of the builder buyer's agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore the respondents are liable to compensate the complainant on account of the aforesaid act of unfair trade practice.

XXIV. That the first time cause of action for the present complaint arose on 10.01.2011 when the application form was filed by the Mr. Sanjeev Kumar Bhatnagar. The cause of action arose again when a one-sided, arbitrary and unilateral buyer's agreement was executed between the respondent and Mr. Tarun Sharma on 12.03.2013. The cause of action for the present complainant again arose when a one-sided, arbitrary and unilateral buyer's agreement was executed between the parties on 17.08.2015 and again when the complainant paid the last instalment on 19.11.2015. Further, the cause of action arose on 12.03.2016 when the respondent(s) party failed to hand over the possession of the unit as per the previous buyer's agreement. The cause of action again arose on various occasions, till date, when the protests were lodged with respondents about its failure to deliver the project. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble Authority restrains the respondents by an order of injunction and/or passes the necessary orders.

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

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

- i. Pass an order that the furnishing of the second/new builder buyer agreement on 17.08.2015 was an alteration of the contract and not the novation of the contract as per the Indian Contract Act, 1872.
  - ii. Direct the respondents to consider the due date of possession as 12.03.2016(as per first/previous flat buyer's agreement) and not 17.08.2019 (as per second/new flat buyer's agreement).
  - iii. Direct the respondents to provide interest at the prescribed rate for every month of delay on the amount paid.
  - iv. Direct the respondents to handover the possession of the flat.
  - v. Direct the respondent to pay Rs.1,00,000/- towards litigation expenses to the complainant.
  - vi. Direct the respondent to pay differential amount of circle state towards stamp duty payable in 2015 and the amount to be paid at the time of execution of sale deed.
5. The counsel for the complainant filed written submissions on behalf of the complainant on 06.06.2022 in which it was mentioned that the complainant has died on 12.04.2022 and placed on record death certificate of the complainant and requested for impleadment of legal heir of complainant in the present complaint. The counsel for the complainant vide proceedings of the day dated 29.02.2024 sated that a copy of an application made to the concerned authority for issuance of legal heir certificate which has been verified by the Halqa Patwari on 02.01.2024 and is under verification/issuance by the Tehsildar which may be filed before next date of hearing and the same is placed on record on 28.03.2024.



6. The counsel for the complainant filed an updated memo of parties on 05.12.2024 and made Yogender Mohan Sharma i.e., legal heir of the complainant a part to the present complaint.
7. On the date of hearing dated 05.09.2024, the authority explained to the respondent/ promoter 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. Written arguments cum reply by the respondents:**

8. The respondents have contested the complaint on the following grounds:
  - I. That at the outset, it is most respectfully submitted that the instant complaint of the complainant is not maintainable on facts or in law and is as such liable to be dismissed/rejected. The complainant has obfuscated the provisions of the Act, 2016 and the rules, 2017 to their advantage, which is brazen misuse of law. The complainant has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. They have raised false, frivolous, misleading and baseless allegations against the respondents with intent to make unlawful gains.
  - II. The respondents had applied for environment clearance on 20.10.2011. The developer finally got the environment clearance on 17.06.2013. The respondents had applied for the revision in building plans of the said project before the appropriate authority. However, for no fault of the respondents, the plans were approved by the Department only after a delay of 2 years. Owing to this, the construction of project could not be started in a timely manner. The

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complainant, having keen interest in the said project, approached the respondents for booking a unit in the said project.

- III. That, after being satisfied with the project in totality he expressed his willingness to book a unit in the project. It is thus apparent on the face of it, the complainant in the present case is not consumer rather 'investor' who falls outside the purview of the Act, 2016 more specifically in view of the preamble of the Act, 2016 which states to protect the interest of the consumers. It is to be considered that complainant is not consumer and thus he fall outside the purview of the Act, 2016 and the instant complaint is liable to be dismissed.
- IV. At present, it is a matter of record that the structure of the said project in question is complete, and few instalments are due and payable on account of the complainants. Moreover, it is pertinent to state that the respondents have applied from obtaining occupation certificate for Phase-I of the said project as all the construction and development activities are complete.
- V. After receipt of SWAMIH investment fund, the respondents were able to resume the construction activities at a very large scale in expeditious manner. The development at the project site is in full swing, in order to complete the project and handover the possession to the allottees at the earliest.
- VI. That the respondents have always made efforts for completion of the said project. Initially, the Interim RERA granted RERA registration on 10<sup>th</sup> January 2018 till 31.12.2020 for Phase I (Tower A to G) and 31.12.2021 for Phase II (Tower H to J). From time-to-time construction activities were impeded due to poor air quality in the Delhi NCR region.



- VII. The legal fraternity is respected for its novelty and highly educated professionals. The Hon'ble Supreme Court has allowed extension of limitation taking into consideration the impact of the novel corona virus over the world. Similarly, the real estate sector was impacted badly due to Covid-19 as the construction activities were halted for a long time. Moreover, the cost of construction kept on increasing with time.
- VIII. The present complaint is devoid of any merit and has been preferred with the sole motive to harass the respondents. In fact, the present complaint is liable to be dismissed on the ground that the said claim of the complainant is unjustified, misconceived and without any basis and is against the respondents. The present complaint is baseless and flagrant abuse of process of law to harass the respondents.
- IX. In spite of the fact that the real estate market has gone down badly, the respondents have managed to carry on the works with certain delays caused due to various above mentioned reasons and the fact that various buyers, including the complainant of the project has defaulted in making timely payments towards his outstanding dues, resulting into inordinate delay in the construction activities, still the construction of the said project has never been stopped or abandoned and the project will be delivered soon.
- X. It is a respectful submission of the respondents that a bare perusal of the complaint will sufficiently elucidate that the complainant has miserably failed to make a case against the respondents. It is submitted that the complainant has merely alleged in the complaint about the delay on the part of the respondents in offering possession but has failed to substantiate the same. The fact is that

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the respondents have been acting in consonance with the registration of project with the Authority and no contravention in terms of the same can be projected on the respondents.

- XI. The Haryana Real Estate Regulatory Authority, Gurugram, does not have jurisdiction in the instant case as the subject-matter of the complaint has to be decided as per the Act, 2016 and the Rules, 2017. The complainant has erred in invoking the jurisdiction of the Authority, Gurugram, as the compensation can only be granted in cases where the Authority so directs.
- XII. Thus, it is germane to state that there is no further deficiency as claimed by the complainant against the respondents and no occasion has occurred deeming indulgence of this authority. Hence, the present complaint is liable to be dismissed.
9. The complainant has filed the complaint against R1 and R2 in which R1 is the land owner of the project land and R2 is the developer/promoter. The flat buyer's agreement has been executed with both the respondents and the payments have been made to R2 only. The registered office address of both the respondents as mentioned in the flat buyer's agreement is same. Sh. Vishnu Pandey, is the Authorized signatory for both the companies and while filing the reply on behalf of both companies he has not distinguished the role and responsibilities between R1 and R2. The respondent no. 1 i.e., KNS Infracon Pvt. Ltd. was granted licence by the Director, Town and Country Planning, Haryana vide licence no. 34 of 2011 to develop and construct the residential group housing project in Sector-111, Gurugram. Though the apartment buyer's agreement have been executed with both the respondents and payments have been made to the respondent no. 2 but the respondent no.1 cannot escape its responsibility and obligations to the allottees of



the project being licensee of the project and is covered under the definition of promoter within the meaning of 2(zk)(i),(v).

10. The promoter has been defined in section 2(zk) of the Act of 2016. The relevant portion of this section reads as under:

**"2. Definitions.** — In this Act, unless the context otherwise requires —  
(zk) "promoter" means, —

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) xxx

(iii) xxx

(iv) xxx

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale;"

11. As per aforesaid provisions of law, respondent no.1 & 2 will be jointly and severally liable for the competition of the project. Whereas the primary responsibility to discharge the responsibilities of promoter lies with respective promoter in whose allocated share the apartments have been bought by the buyers.
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 and submission made by the parties.

#### **E. Jurisdiction of the authority:**

13. The respondents have raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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**



14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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 complete territorial jurisdiction to deal with the present complaint.

**E.II Subject-matter jurisdiction**

15. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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.*

16. So, in view of the provisions of the Act of 2016 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 complainant at a later stage.

**F. Findings on the objections raised by the respondent:**

**F.I Objection regarding delay due to force majeure circumstances.**

17. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as orders passed by the National Green Tribunal during October-November 2019 and other orders. But the plea taken by respondents is



devoid of merit and hence, rejected. The authority is of considered view that as per clause 2.1 of flat buyer's agreement, the due date of handing over of possession is to be calculated as 48 months from date of sanction of building plan including a grace period of 180 days. The date of sanction of building plan as stated by complainant is 07.06.2012. As the due date of handing over of possession come out to be 07.12.2016 which is way before from the conditions that respondents are taking plea of. The respondents were liable to complete the construction of the project and handover the possession of the said unit by 07.12.2016 and the respondents are claiming benefit of ban on construction by National green Tribunal laid in October-November 2019 whereas the due date of handing over of possession was much prior to the event. Therefore, the authority is of the view that ban on construction by NGT cannot be used as an excuse for non- performance of a contract for which the deadlines were much before such restriction, the said time period is not excluded while calculating the delay in handing over possession.

**F.II Objection regarding delay in completion of construction of project due to outbreak of Covid-19**

18. The Hon'ble Delhi High Court in case titled as **M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020** dated 29.05.2020 has observed as under:

*69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*

19. In the present case also, the respondents were liable to complete the construction of the project and handover the possession of the said unit

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by 07.12.2016. It is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period cannot be excluded while calculating the delay in handing over possession.

**F.III Objection regarding the complainant being investor**

20. The respondents have taken a stand that the complainant is investor and not consumer, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondents also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondents are correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aim & object of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment*

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*through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

21. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the flat buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is allottee(s) as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

**G. Findings on the relief sought by the complainant(s):**

- G.I Pass an order that the furnishing of the second/new builder buyer's agreement on 17.08.2015 was an alteration of the contract and not the novation of the contract as per the Indian Contract Act, 1872**
22. The first flat buyer's agreement was executed between the second allottee i.e., Mr. Tarun Sharma and the respondents on 12.03.2013 and the second flat buyer's agreement was executed between the present complainant i.e., Mr. Khushi Ram Sharma and the respondents on 17.08.2015. As per Indian Contract Act, 1872 the alteration of an agreement means when some terms of the original agreement are modified or changed with the consent of all the parties whereas the novation of a agreement is substitution of an old agreement with a new agreement. But in alteration of an agreement, the parties to an agreement do not change. In the present complaint, the parties to an agreement dated 12.03.2013 and 17.08.2015 are different. Moreover, earlier agreement was executed between former allottee and the respondents while the new agreement is executed between the complainants and the respondents. Therefore, the second/new buyer's



agreement is not an alteration of the previous buyer's agreement. Thus, no direction to this effect and Authority shall proceed in terms of new agreement duly executed between the complainant and the respondents.

**G.II Direct the respondents to consider the due date of possession as 12.03.2016(as per first/previous flat buyer's agreement) and not 17.08.2019 (as per second/new flat buyer's agreement).**

23. A flat buyer's agreement was executed on 12.03.2013 between Mr. Tarun Sharma and the respondents and the due date as per the said agreement comes to 07.06.2015. On 17.08.2015 Mr. Tarun Sharma transferred all his rights and interests to the complainant i.e., Mr. Khushi Ram Sharma and a new builder buyer's agreement dated 17.08.2015 was executed between the complainant and the respondents which was duly signed by both the parties. This implies that all the terms and conditions of the said agreement dated 17.08.2015 were accepted by both the parties. The due date of possession as per possession clause of the said agreement comes to 07.12.2016 including a grace period of 180 days and the same cannot be changed at this belated stage. Thus, no direction to this effect.

**G.III Direct the respondents to provide interest at the prescribed rate for every month of delay on the amount paid.**

**G.IV Direct the respondents to handover the possession of the flat.**

24. The above sought relief(s) by the complainant are taken together being inter-connected.
25. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which 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."*

26. The flat buyer's agreement was executed between the parties. As per clause 2.1 of the agreement, the possession was to be handed over within 48 months from the date of sanction of building plans. The clause 2.1 of the buyer's agreement is reproduced below:

**2. Possession**

*2.1 subject to clause 9 herein or any other circumstances not anticipated and beyond control of the first party/confirming party and any restraints/restrictions from any courts/authorities and subject to the purchaser having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement including but not limited timely payment of total sale consideration and stamp duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the first party/confirming party, whether under this agreement or otherwise, from time to time, the first party/confirming party proposes to handover the possession of the flat to the purchaser within approximate period of 48 months from the date of sanction of the building plans of the said colony. The purchaser agrees and understands that the first party/confirming party shall be entitled to a grace period of 180 (One hundred and Eighty) days, after the expiry of 48 months, for applying and obtaining the occupation certificate in respect of the colony from the concerned authority.*

*(Emphasis supplied)*

27. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of the agreement, and the complainant not being in default under any provisions of the agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as



prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

28. **Admissibility of grace period:** As per clause 2.1 of buyer's agreement, the respondents/promoters have proposed to handover the possession the said unit within a period of 48 months from date of sanction of building plans. The building plans were approved on 07.06.2012. Therefore, the due date of possession comes out to be 07.06.2016. It is further provided in agreement that promoters shall be entitled to a grace period of 180 days for applying and obtaining the occupancy certificate in respect of the colony from the concerned authority. The said grace period is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in *Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari* wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:

*"In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace*





*period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."*

29. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 07.12.2016 including grace period of 180 days.

30. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) 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.*

31. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. 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., 20.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.



32. 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;"*
33. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 2.1 of the flat buyer's agreement executed between the parties, the possession of the subject unit was to be delivered within a period of 48 months from date of sanction of building plans. Date of sanction of building plan is taken from written submissions submitted by complainant i.e., 07.06.2012. As such the due date of handing over of possession comes out to be 07.12.2016. The respondent has failed to handover possession of the subject unit till date. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainant as per the terms





and conditions of the flat buyer's agreement dated 17.08.2015 executed between the parties. It is pertinent to mention over here that even after a passage of more than 9 years neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

34. 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 has not been obtained. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 07.12.2016 till the expiry of 2 months from the date of offer of possession plus two months after obtaining OC or handing over of possession whichever is earlier.
35. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondents is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 07.12.2016 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

A



**G.V Direct the respondents to pay Rs.1,00,000/- towards litigation expenses to the complainant.**

36. The complainant is seeking relief w.r.t compensation in the aforesaid relief, **Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra** held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

**G.VI Direct the respondents to pay differential amount of circle state towards stamp duty payable in 2015 and the amount to be paid at the time of execution of sale deed.**

37. As per clause 5.4 of the flat buyer's agreement provides for conveyance deed and stamp duty and is reproduced below for ready reference:

*"5. Conveyance Deed and Stamp Duty*

*The stamp duty, statutory charges and registration charges and incidental charges and incidental charges of the conveyance/sale/transfer deed or any other documents required to be executed under this agreement shall be borne by the purchaser.*

38. The Authority has gone through the conveyance deed and stamp duty clause of the agreement and observes that the stamp duty, registration charges and administrative charges shall be borne by the complainant-allottee at the time of execution of registration of conveyance deed.

39. Also, as per section 19(6) of the Act, which is reproduced below:

*"19. Rights and duties of allottees:*

*19(6) Every allottee, who has entered into agreement or sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any."*

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40. The authority is of the view that it is the duty of the complainant/allottee to pay the stamp duty, registration charges at the time of execution of registration of conveyance deed and administrative charges up to Rs.15,000/- as fixed by the local administration.

**H. Directions of the authority:**

41. Hence, the authority hereby passes this order and issue 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 respondents are directed to pay interest to the complainant/legal heirs of the complainant against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 07.12.2016 till actual handing over of possession or offer of possession after obtaining occupation certificate plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
  - ii. The respondents shall not charge anything from the complainant/legal heirs of the complainant which is not the part of the flat buyer's agreement.
  - iii. The complainant/legal heirs of the complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and the respondents shall handover the possession within a period of two month after receipt of occupation certificate from the competent authority.
  - iv. The arrears of such interest accrued from due date of possession i.e., 07.12.2016 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by

the promoter to the allottees before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.


- v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% 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.

42. Complaint stands disposed of.

43. File be consigned to registry.

Dated: 20.03.2025



  
(Vijay Kumar Goyal)  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram

**HARERA**  
**GURUGRAM**